

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Hazardous Substance Account Recodification Act: Conforming Revisions

January 2020

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 24, 2020.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

At the request of the Legislature, the Law Revision Commission prepared a tentative recommendation that proposes to recodify Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

The proposed recodification would relocate the substance of Chapter 6.8 to Part 2 of a new division (Division 45) of the Health and Safety Code. This change requires renumbering the provisions of Chapter 6.8.

Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents. If the recodification is enacted, these cross-references will need to be revised to reflect to the recodified numbering scheme.

This tentative recommendation proposes the necessary conforming revisions. The Commission seeks comments on these revisions.

This tentative recommendation was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.



## HAZARDOUS SUBSTANCE ACCOUNT RECODIFICATION ACT: CONFORMING REVISIONS

1 In 2018, the Legislature directed the Law Revision Commission to conduct a  
2 strictly nonsubstantive clean-up of “Chapter 6.5 (commencing with Section 25100)  
3 and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and  
4 Safety Code, and related provisions, to improve the organization and expression of  
5 the law.”<sup>1</sup>

6 The Commission decided to proceed with this work in phases, first undertaking  
7 work on Chapter 6.8. The Commission has prepared a separate tentative  
8 recommendation presenting a complete draft of a proposed recodification of the  
9 provisions of Chapter 6.8.

10 The proposed recodification would relocate the substance of Chapter 6.8 to Part  
11 2 of a new division (Division 45) of the Health and Safety Code. This change  
12 requires renumbering the provisions of Chapter 6.8. The numbers for all of the  
13 sections within Chapter 6.8 will change,<sup>2</sup> some of the sections (particularly the long  
14 ones) would be split into two or more sections (in some cases, a section would be  
15 recodified as multiple sections within a single article), and substantively similar  
16 provisions would be placed together in a logical order.

17 Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents.  
18 If the recodification is enacted, these cross-references will need to be revised to  
19 reflect to the recodified numbering scheme.

20 This tentative recommendation proposes the necessary conforming revisions. In  
21 general, they are quite straightforward. A few key points are explained below.

### 22 **Nonsubstantive Reform**

23 In directing the Commission to study Chapter 6.8, the Legislature specified that  
24 the Commission’s recommended legislation “shall not make any substantive  
25 changes to the law.”<sup>3</sup> The Commission took care to adhere to that limitation in  
26 preparing its proposed recodification of Chapter 6.8.<sup>4</sup>

27 The Commission took similar care in preparing the conforming revisions  
28 presented in this tentative recommendation. In particular, the proposed legislation

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1. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

2. Chapter 6.8 would be recodified as Health and Safety Code Sections 68000-71050.

3. 2018 Cal. Stat. res. ch. 158.

4. For a description of specific measures the Commission took to prevent any substantive change, see Tentative Recommendation on *Hazardous Substance Account Recodification Act* (January 2020), pp. 7-11 (hereafter, “Recodification TR”).

Any California Law Revision Commission document referred to in this tentative recommendation can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

1 would only update the cross-references to Chapter 6.8 and its contents and make  
2 other minor technical revisions, such as:

- 3 • Elimination of gendered pronouns.<sup>5</sup>
- 4 • Insertion of subdivision or paragraph labels (where this would not create any  
5 ambiguity or necessitate additional conforming revisions).<sup>6</sup>
- 6 • Other revisions to conform to legislative drafting conventions.<sup>7</sup>
- 7 • Correction of obsolete or erroneous cross-references. Each such correction is  
8 explained in the accompanying Comment or Note.<sup>8</sup>
- 9 • A few miscellaneous technical revisions.<sup>9</sup>

10 Consistent with the limited scope of its legislative mandate, the Commission did not  
11 consider, and is not proposing, any other kinds of changes to the provisions affected  
12 by this tentative recommendation.<sup>10</sup>

13 Due to their bulk, the conforming revisions in this tentative recommendation  
14 might be introduced as a separate bill, instead of being included in the same bill as  
15 the recodification of Chapter 6.8. Regardless of whether these conforming revisions  
16 are in a separate bill, the Commission will make sure that they are statutorily defined  
17 to be part of the “Hazardous Substance Account Recodification Act.”<sup>11</sup>

18 Including these revisions in that term is important, because the proposed  
19 recodification includes the following provision:

20 68010. Nothing in the Hazardous Substance Account Recodification Act is  
21 intended to substantively change the law contained in former Chapter 6.8  
22 (commencing with 25300) of Division 20. The act is intended to be entirely  
23 nonsubstantive in effect. Every provision of this part and every other provision of

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5. See, e.g., proposed amendments of Health & Safety Code §§ 25198.3 *infra* and proposed amendment of Penal Code § 803 *infra*.

6. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*. For an example of a situation where the Commission deliberately refrained from inserting labels, see proposed amendment of Gov’t Code § 53313 *infra*.

7. See, e.g., proposed amendments of Civ. Code §§ 851, 853 (eliminating uses of the word “such,” which is disfavored in legislative drafting except in certain phrases); proposed amendments of Health & Safety Code §§ 25220, 25250.54, 57010 *infra* (replacing “Internet Web site” with “internet website”).

8. See proposed amendment of Civil Code § 853 *infra*; proposed amendments of Health & Safety Code §§ 25178, 25404.1 *infra*.

9. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*; proposed amendment of Health & Safety Code § 25262 *infra*.

10. Accordingly, readers of this tentative recommendation should not infer that the Commission has evaluated and approved language that would not be changed by this tentative recommendation.

11. If the conforming revisions are introduced in a separate bill (as seems likely), it will be necessary to revise proposed Health and Safety Code Section 68000(b), which defines “Hazardous Substance Account Recodification Act.” The Commission will address this point when it considers the comments on the Tentative Recommendation on *Hazardous Substance Account Recodification Act*.

1 this act, *including, without limitation, every cross-reference in every provision of*  
2 *the act*, shall be interpreted consistent with the nonsubstantive intent of the act.<sup>12</sup>

3 This provision underscores the nonsubstantive nature of the recodification as a  
4 whole and the updated cross-references in particular. It will help to ensure that the  
5 courts and others interpret the recodification accordingly.

#### 6 **Contingent and Deferred Operation**

7 On the assumption that the conforming revisions will be introduced as a separate  
8 bill, this tentative recommendation includes an uncodified provision that would  
9 make the conforming revisions operative only if the recodification bill is enacted  
10 and becomes operative.<sup>13</sup> The operation of this legislation is also deferred to match  
11 the deferred operation date proposed for the recodification legislation.<sup>14</sup>

12 The Commission will insert the appropriate bill number in this uncodified  
13 provision after the recodification bill is introduced.

#### 14 **Subordination Clause**

15 This tentative recommendation also includes a subordination clause, in case one  
16 or more of the code provisions in this tentative recommendation is also amended in  
17 a substantive manner by another bill.<sup>15</sup> The subordination clause would ensure that  
18 the substantive reform overrides the conforming revision, regardless of which bill  
19 is chaptered first. Although the conforming revision would be nullified by the  
20 substantive reform, it could be reintroduced the following year. With the deferred  
21 operative date, the conforming revision could still be enacted prior to the  
22 recodification taking effect. Even if a conforming revision is not enacted prior to  
23 the recodification taking effect, the proposed recodification includes a provision that  
24 ensures that the outdated cross-reference would be understood as a cross-reference  
25 to the recodified provision until the relevant conforming revision could be enacted.<sup>16</sup>

#### 26 **Request for Public Comment**

27 The Commission seeks public comment on its tentative recommendation. It is just  
28 as important to submit comments in support of the tentative recommendation as it  
29 is to submit comments that raise concerns. Comments from knowledgeable persons  
30 (whether positive, negative, or more nuanced) are invaluable in the Commission's  
31 study process.

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12. Proposed legislation in Recodification TR, *supra* note 4, at 3 (emphasis added).

13. See proposed uncodified provision on contingent operation (at the end of the proposed legislation) *infra*.

14. See proposed uncodified provision on operative date in Recodification TR, *supra* note 4, at 188.

15. See proposed uncodified subordination clause (at the end of the proposed legislation) *infra*.

16. See proposed Section 68015(b) in Recodification TR, *supra* note 4, at 3 (“A reference in a statute or regulation to a previously existing provision that is restated and continued in this part shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.”).

1        Several of the conforming revisions are accompanied by a boxed “Note,” which  
2 provides background information or draws attention to an issue. The Commission  
3 would especially appreciate comments on the issues raised in the Notes.

4        The Commission often substantially revises its recommendations as a result of  
5 public comment. Comments can be in any format. To receive timely consideration,  
6 **comments should be submitted to [kburford@clrc.ca.gov](mailto:kburford@clrc.ca.gov) by July 24, 2020.**

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## TECHNICAL AND CONFORMING REVISIONS

1

### BUSINESS AND PROFESSIONS CODE

2 **§ 7058.7 (amended). Hazardous substance certification examination**

3 SEC. \_\_. Section 7058.7 of the Business and Professions Code is amended to read:

4 7058.7. (a) No contractor may engage in a removal or remedial action, as defined  
5 in subdivision (d), unless the qualifier for the license has passed an approved  
6 hazardous substance certification examination.

7 (b)(1) The Contractors' State License Board, the Division of Occupational Safety  
8 and Health of the Department of Industrial Relations, and the Department of Toxic  
9 Substances Control shall jointly select an advisory committee, which shall be  
10 composed of two representatives of hazardous substance removal workers in  
11 California, two general engineering contractors in California, and two  
12 representatives of insurance companies in California who shall be selected by the  
13 Insurance Commissioner.

14 (2) The Contractors' State License Board shall develop a written test for the  
15 certification of contractors engaged in hazardous substance removal or remedial  
16 action, in consultation with the Division of Occupational Safety and Health, the  
17 State Water Resources Control Board, the Department of Toxic Substances Control,  
18 and the advisory committee.

19 (c) The Contractors' State License Board may require additional updated  
20 approved hazardous substance certification examinations of licensees currently  
21 certified based on new public or occupational health and safety information. The  
22 Contractors' State License Board, in consultation with the Department of Toxic  
23 Substances Control and the State Water Resources Control Board, shall approve  
24 other initial and updated hazardous substance certification examinations and  
25 determine whether to require an updated certification examination of all current  
26 certificate holders.

27 (d) For purposes of this section "removal or remedial action" has the same  
28 meaning as found in ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~  
29 Part 2 (commencing with Section 68000) of Division 45 of the Health and Safety  
30 Code, if the action requires the contractor to dig into the surface of the earth and  
31 remove the dug material and the action is at a site listed pursuant to ~~Section 25356~~  
32 Article 5 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45  
33 of the Health and Safety Code or any other site listed as a hazardous substance  
34 release site by the Department of Toxic Substances Control or a site listed on the  
35 National Priorities List compiled pursuant to the Comprehensive Environmental  
36 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).  
37 "Removal or remedial action" does not include asbestos-related work, as defined in  
38 Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on  
39 a highway.

1 (e)(1) A contractor may not install or remove an underground storage tank, unless  
2 the contractor has passed the hazardous substance certification examination  
3 developed pursuant to this section.

4 (2) A contractor who is not certified may bid on or contract for the installation or  
5 removal of an underground tank, if the work is performed by a contractor who is  
6 certified pursuant to this section.

7 (3) For purposes of this subdivision, “underground storage tank” has the same  
8 meaning as defined in subdivision (y) of Section 25281 of the Health and Safety  
9 Code.

10 **Comment.** Section 7058.7 is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 CIVIL CODE

14 § 850 (amended). Definitions

15 SEC. \_\_. Section 850 of the Civil Code is amended to read:

16 850. The definitions set forth in Section 25260 of the Health and Safety Code  
17 govern the construction of this chapter. In addition, the following definitions apply  
18 for purposes of this chapter only:

19 (a) “Actual awareness” means actual knowledge of a fact pertaining to an  
20 obligation under this chapter, including actual knowledge of a release exceeding the  
21 notification threshold. Only actual awareness possessed by those employees or  
22 representatives of an owner of a site who are responsible for monitoring, responding  
23 to or otherwise addressing the release shall be attributable to the owner. Only actual  
24 awareness possessed by those employees or representatives of a potentially  
25 responsible party who are responsible for monitoring, responding to, or otherwise  
26 addressing, the release shall be attributable to the potentially responsible party.

27 (b) “Commitment statement” means a written statement executed by the notice  
28 recipient which recites expressly the language specified in Section 854.

29 (c) “Mediation” means an informal process in which the disputing parties select a  
30 neutral third party to assist them in reaching a negotiated settlement in which the  
31 neutral third party has no power to impose a solution on the parties, but rather has  
32 the power only to assist the parties in shaping solutions to meet their interests and  
33 objectives.

34 (d) “Negative response” means a written response by the recipient of a notice of  
35 potential liability indicating that the recipient will not undertake any response  
36 action, or a deemed negative response pursuant to subdivision (c) of Section 851 in  
37 the event of the recipient’s failure to respond.

38 (e) “Neutral third party” means an experienced professional, such as an attorney,  
39 engineer, environmentalist, hydrologist, or retired judge, who has served as a  
40 mediator.

1 (f) “Notice of potential liability” means a notice, sent by the owner of the site,  
2 stating that a release that exceeds the notification threshold has occurred at the site  
3 and that the owner believes that the recipient of the notice is a responsible party with  
4 respect to the release. The notice of potential liability shall describe the location of  
5 the site and the nature of the release.

6 (g) “Notice recipient” means any one of the following:

7 (1) A person who receives a notice of potential liability pursuant to subdivision  
8 (a) of Section 851.

9 (2) A person who provides a release report pursuant to subdivision (b) of Section  
10 851.

11 (3) A person who offers a commitment statement to the owner of a site pursuant  
12 to subdivision (c) of Section 851.

13 (h) “Notification threshold” means any release of such a magnitude that:

14 (1) The release is the subject of a response action which has been ordered by, or  
15 is being performed by, an oversight agency; or

16 (2) The release is impeding the ability of the owner of the site to sell, lease, or  
17 otherwise use the site.

18 (i) “Operation and maintenance” means any activity as defined in ~~subdivision (a)~~  
19 ~~of Section 25318.5~~ Section 68080 of the Health and Safety Code.

20 (j) “Oversight agency” means any agency, as defined in subdivision (c) of Section  
21 25260 of the Health and Safety Code, that has jurisdiction over a response action  
22 performed in connection with a release that is the subject of a notice of potential  
23 liability. Subject to any other limitation imposed by law, an oversight agency retains  
24 full discretion as to when it exercises jurisdiction over a site.

25 (k) “Reasonable steps,” as used in subdivision (a) of Section 851, means the least  
26 expensive means available to ascertain the potentially responsible parties. If the  
27 owner cannot otherwise identify any apparent, potentially responsible parties, then  
28 “reasonable steps” includes:

29 (1) Conducting a title search; and

30 (2) Reviewing all environmental reports in the owner’s possession of which the  
31 owner has actual awareness pertaining to the site.

32 (l) “Release” means the release, as defined in ~~Sections 25320 and 25324~~ Section  
33 68105 of the Health and Safety Code, of a hazardous material or hazardous  
34 materials.

35 (m) “Release report” means a notice sent by a responsible party to the owner of  
36 the site stating that a release has occurred on the site which is likely to exceed the  
37 notification threshold. The release report shall describe the location of the site and  
38 the nature of the release.

39 (n) “Remedial action” means any action as defined in Section ~~25322~~ 68125 of the  
40 Health and Safety Code.

41 (o) “Removal action” means any action as defined in ~~subdivision (a) of Section~~  
42 ~~25323~~ Section 68135 of the Health and Safety Code.

1 (p) “Response action” means any removal actions, including, but not limited to,  
2 site investigations and remedial actions, including, but not limited to, operation and  
3 maintenance measures.

4 (q) “Responsible party” means any person who is liable under state or local law  
5 for taking action in response to a release.

6 (r) “Site” means any parcel of commercial, industrial, or agricultural real property  
7 where a hazardous materials release has occurred.

8 (s) “Written action” means any official action by any oversight agency where the  
9 oversight agency has expressly exercised its cleanup authority in writing, pursuant  
10 to the oversight agency’s procedures, directing a response action at the site.

11 **Comment.** Subdivisions (i), (l), (n), and (o) of Section 850 are amended to update cross-  
12 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with  
13 Section 25300) of Division 20 of the Health and Safety Code.

14 **Notes. (1)** Section 850(i) cross-refers to the definition of “operation and maintenance” in  
15 subdivision (a) of Health and Safety Code Section 25318.5. Currently, Health and Safety Code  
16 Section 25318.5, which defines “operation and maintenance,” has no subdivisions. In a former  
17 version of that section, “operation and maintenance” was defined in subdivision (a), while the later  
18 subdivisions defined different sizes of operation and maintenance activities (i.e., small, medium,  
19 large, extra-large). See former Section 25318.5, as amended by 1989 Cal. Stat. ch. 1032, § 13.  
20 Those different sizes of operation and maintenance activities are no longer defined, so the  
21 designation of “subdivision (a)” is obsolete. For this reason, the cross-reference has been updated  
22 to refer to proposed Section 68080, which continues the definition of “operation and maintenance”  
23 in Section 25318.5. **Absent comment, this proposed cross-reference update will be presumed**  
24 **correct.**

25 **(2)** Section 850(o), which defines “removal action,” cross-refers to the actions defined in  
26 subdivision (a) of Health and Safety Code Section 25323. Currently, Health and Safety Code  
27 Section 25323, which defines “remove” or “removal,” has no subdivisions. In a former version of  
28 that section, “remove” was defined in subdivision (a), while the later subdivisions defined different  
29 sizes of removal activities (i.e., small, medium, large, extra-large). See former Section 25318.5, as  
30 amended by 1989 Cal. Stat. ch. 269, § 28. Those different sizes of removal activities are no longer  
31 defined, so the designation of “subdivision (a)” is obsolete. For this reason, the cross-reference has  
32 been updated to refer to proposed Section 68135, which continues the definition of “remove” in  
33 Section 25323. **Absent comment, this proposed cross-reference update will be presumed**  
34 **correct.**

35 **§ 851 (amended). Obligations and notices for release**

36 SEC. \_\_. Section 851 of the Civil Code is amended to read:

37 851. (a) An owner of a site who has actual awareness of a release exceeding the  
38 notification threshold shall take all reasonable steps as defined in subdivision (j) of  
39 Section 850 to expeditiously identify the potentially responsible parties. The owner  
40 shall, as soon as reasonably possible after obtaining actual awareness of the  
41 potentially responsible parties, send a notice of potential liability to the identified  
42 potentially responsible parties and the agency, as defined in subdivision (c) of  
43 Section 25260 of the Health and Safety Code, that the owner believes to be the  
44 appropriate oversight agency. For any release exceeding the notification threshold  
45 of which the owner has actual awareness that occurred prior to, but within three

1 years of, the effective date of this section, the notice shall be given on or before  
2 December 31, 1998.

3 (b) A potentially responsible party who has actual awareness of a release which  
4 is likely to exceed the notification threshold shall as soon as reasonably possible  
5 after obtaining actual awareness of the release provide the owner of the site where  
6 the release occurred with a release report. For any release exceeding the notification  
7 threshold of which the potentially responsible party has actual awareness that  
8 occurred prior to, but within three years of, the effective date of this section, the  
9 release report shall be given on or before December 31, 1998. A potentially  
10 responsible party may issue, at the potentially responsible party's option, a  
11 commitment statement to the owner of the site within 120 days of the potentially  
12 responsible party's issuance of a release report. The fact that a release report is  
13 issued shall not constitute an admission of liability and may not be admitted as  
14 evidence against a potentially responsible party in any litigation.

15 (c) When a notice of potential liability is issued, a notice recipient shall respond  
16 to the owner, in writing, and by certified mail, return receipt requested, within 120  
17 days from the date that the notice of potential liability was mailed. The notice  
18 recipient's response shall be either a commitment statement or a negative response.  
19 The notice recipient's failure to submit the written response within the 120-day  
20 period, or failure to strictly comply with the form of the written response, as  
21 provided in Section 854, shall be deemed a negative response. The owner may agree  
22 in writing to extend the period during which the notice recipient may respond to the  
23 notice of potential liability. An extension of up to 120 days shall be provided if the  
24 notice recipient commits to do a site investigation, the results of which shall be  
25 provided to the owner and the oversight agency.

26 (d)(1) The common law duty to mitigate damages shall apply to any failure of the  
27 owner of a site to give a timely notice of potential liability when the owner is  
28 required to give this notice pursuant to this chapter. Where an owner fails to mitigate  
29 damages by not giving a timely notice of potential liability, the owner's damage  
30 claim shall be reduced in accordance with common law principles by the amount  
31 that the potentially responsible party proves would have likely been mitigated had  
32 a timely notice of potential liability been given.

33 (2) Common law principles shall apply to the failure of the potentially responsible  
34 party to issue a timely release report. Where a potentially responsible party fails to  
35 give a timely release report, the potentially responsible party, in accordance with  
36 common law principles, shall be responsible to the owner of the site, for damages  
37 that the owner proves are likely caused by ~~such~~ the failure to provide a release  
38 report.

39 (3) Any party who argues the applicability of this subdivision carries the burden  
40 of proof in that regard.

41 (4) Nothing in this section is intended to create a new cause of action or defense  
42 beyond that which already exists under common law.

1 (5) Subdivisions (a) and (b), and paragraphs (1) and (2) of this subdivision, shall  
2 not apply when the party to whom a notice of potential liability or release report is  
3 owed already possesses actual awareness of the information required to be  
4 transmitted in ~~such~~ the notice of potential liability or release report.

5 (e)(1) Except as provided in paragraph (2), the requirements of this chapter shall  
6 not apply to a site listed pursuant to ~~Section 25356~~ Article 5 (commencing with  
7 Section 68760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code  
8 for response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ of  
9 ~~Division 20 Part 2 (commencing with Section 68000)~~ of Division 45 of the Health  
10 and Safety Code or to a site where an oversight agency has issued an order or entered  
11 into an enforceable agreement pursuant to any authority, including, but not limited  
12 to, an order or enforceable agreement entered into by a local agency, the Department  
13 of Toxic Substance Control, the State Water Resources Control Board, or a regional  
14 water quality control board pursuant to Chapter 6.5 (commencing with Section  
15 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing  
16 with Section 25299.10), ~~Chapter 6.8 (commencing with Section 25300)~~, Chapter  
17 6.85 (commencing with Section 25396), or Chapter 6.11 (commencing with Section  
18 25404) of Division 20 of , or Part 2 (commencing with Section 68000) of Division  
19 45 of, the Health and Safety Code, or pursuant to Division 7 (commencing with  
20 Section 13000) of the Water Code.

21 (2) The requirements of this chapter shall apply if either of the following applies:

22 (A) The order or enforceable agreement is issued or entered into after the owner  
23 accepts a commitment statement.

24 (B) The Department of Toxic Substance Control, State Water Resources Control  
25 Board, or regional water quality control board that issued the order or entered into  
26 an enforceable agreement consents in writing to the applicability of this chapter to  
27 the site.

28 (f) It is the intent of the Legislature for this chapter to resolve disputes between,  
29 and affect the rights of, private parties only. Nothing in this chapter shall affect the  
30 authority of the Department of Toxic Substance Control, the State Water Resources  
31 Control Board, a regional water quality control board, or any other oversight agency.

32 (g) Notwithstanding any other provision of this chapter, any time prior to  
33 accepting a commitment statement, the owner may provide the notice to the notice  
34 recipient that the provisions of subdivision (c), paragraph (2) of subdivision (e), and  
35 Sections 852 and 854, shall not apply to the site, in which case the provisions of  
36 subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854 shall not  
37 apply to the site and the owner and notice recipient shall be entitled to pursue all  
38 other legal remedies and defenses authorized by law.

39 **Comment.** Section 851(e) is amended to update cross-references in accordance with the  
40 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
41 the Health and Safety Code.

42 This section is also amended to make technical changes.

1 § 853 (amended). Construction of chapter

2 SEC. \_\_. Section 853 of the Civil Code is amended to read:

3 853. (a) Neither the failure to issue a commitment statement nor its issuance shall  
4 be construed as an admission that the recipient of the notice of potential liability is  
5 liable under any federal, state, or local law, including common law, for the release  
6 that the party agrees to investigate or respond. Neither the failure to issue a  
7 commitment statement nor the contents of the commitment statement shall be  
8 admissible evidence in any proceeding, as defined in Section 901 of the Evidence  
9 Code, except that the contents of the commitment statement shall be admissible  
10 evidence in an action to enforce the commitment statement to the extent that ~~such~~  
11 the contents would be admissible under other applicable law.

12 (b) Nothing in this chapter shall subject a notice recipient to any damages, fines,  
13 or penalties for a failure to make a written response, either positive or negative, to a  
14 notice of potential liability.

15 (c) Nothing in this chapter shall subject the owner of a site to any damages, fines,  
16 or penalties for a failure to send a notice of potential liability pursuant to Section  
17 851. Failure by the owner of a site to send a notice of potential liability of a release  
18 in a timely fashion shall not be deemed to create any liability for the owner under a  
19 theory of negligence per se.

20 (d) Nothing in this chapter imposes an affirmative duty on the owner of a site, or  
21 any potentially responsible party, to discover, or determine the nature or extent of,  
22 a hazardous materials release at the site. This chapter does not affect ~~such~~ an  
23 affirmative duty described in this subdivision to the extent ~~it~~ that duty is imposed  
24 by any other law.

25 (e) Subject to the defenses specified in Section 101(35) and 107(b) of the federal  
26 Comprehensive Environmental Response, Compensation, and Liability Act of  
27 1980, as amended (42 U.S.C. Secs. 9601(35) and 9607(b)), a cause of action is  
28 hereby established whereby a notice recipient may recover from any responsible  
29 party any reasonable response costs for conducting a response action as may be  
30 approved or overseen by an oversight agency or as incurred pursuant to a  
31 commitment statement. Liability among responsible parties shall be allocated based  
32 upon the equitable factors specified in former subdivision (c) of former Section  
33 25356.3 of the Health and Safety Code, as it existed prior to its repeal by Chapter  
34 39 of the Statutes of 2012. No third-party beneficiary rights are created by a  
35 commitment statement, except as provided in subdivision (b) of Section 854. This  
36 cause of action applies to costs incurred prior to enactment of this subdivision.  
37 However, no recovery may be obtained under this subdivision for costs incurred  
38 more than three years prior to the filing of litigation to recover those costs. The  
39 cause of action established pursuant to this subdivision shall not apply against a  
40 current or former owner of a site unless that owner operated a business that caused  
41 a release being addressed by a response action at the site and the costs incurred by  
42 the notice recipient were in response to a release caused by the owner.

1 (f) Nothing in this chapter shall affect or limit the rights of an owner under  
2 preexisting contract. Nothing in this chapter shall affect or limit the right of a notice  
3 recipient and owner to agree to an allocation of liability or to an assignment of rights  
4 and obligations that is different from or inconsistent with this chapter. ~~Such~~  
5 ~~agreements~~ Agreements allocating liability or assigning rights and obligations shall  
6 supersede the terms of this chapter.

7 (g) Nothing in this chapter shall make a notice recipient a responsible party,  
8 beyond the obligations the notice recipient undertakes pursuant to this chapter.

9 (h) Nothing in this chapter shall apply to causes of action for wrongful death or  
10 personal injury. However, the pleading of a cause of action for wrongful death or  
11 personal injury shall not affect the applicability of this chapter to other causes of  
12 action in the same civil action.

13 **Comment.** Section 853(e) is amended to update cross-references in accordance with the repeal  
14 of Health and Safety Code Section 25356.3 in 2012. See 2012 Cal. Stat. ch. 39, § 63.

15 This section is also amended to make technical changes.

16 **Note.** Section 853(e) cross-refers to Section 25356.3 of the Health and Safety Code. This provision  
17 was repealed in 2012. See 2012 Cal. Stat. ch. 39, § 63. Prior to its repeal, the section related to an  
18 arbitration program for apportioning liability for hazardous substance clean-up costs. The program  
19 was repealed in 2012. The Commission provisionally recommends updating this cross-reference to  
20 refer to former Section 25356.3, as it existed prior to its repeal. However, it is unclear whether the  
21 equitable factors contained in former Section 25356.3(c) might have been continued elsewhere in  
22 the code. In this case, the cross-reference could be updated to instead refer to a current provision  
23 containing the relevant equitable factors. **The Commission welcomes comment on this issue.**

24 **§ 2079.7 (amended). Disclosure obligation of seller or broker**

25 SEC. \_\_. Section 2079.7 of the Civil Code is amended to read:

26 2079.7. (a) If a consumer information booklet described in Section 10084.1 of the  
27 Business and Professions Code is delivered to a buyer in connection with the sale  
28 of real property, including property specified in Section 1102 of the Civil Code, or  
29 manufactured housing, as defined in Section 18007 of the Health and Safety Code,  
30 a seller or broker is not required to provide additional information concerning, and  
31 the information shall be deemed to be adequate to inform the buyer regarding,  
32 common environmental hazards, as described in the booklet, that can affect real  
33 property.

34 (b) Notwithstanding subdivision (a), nothing in this section either increases or  
35 decreases the duties, if any, of sellers or brokers, including, but not limited to, the  
36 duties of a seller or broker under this article, Article 1.5 (commencing with Section  
37 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or ~~Section 25359.7~~ Section  
38 68700 of the Health and Safety Code, or alters the duty of a seller or broker to  
39 disclose the existence of known environmental hazards on or affecting the real  
40 property.

41 **Comment.** Section 2079.7 is amended to update cross-references in accordance with the  
42 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
43 the Health and Safety Code.

1 **Note.** Section 2079.7(b) cross-refers to Section 25359.7 of the Health and Safety Code. Section  
2 25359.7 is proposed for recodification as two sections, proposed Sections 68700 and 68705.  
3 Proposed Section 68700 appears to be the only one of those sections relevant to the purpose of the  
4 cross-reference, as it relates to disclosure obligations for property owners. Proposed Section 68705  
5 relates to disclosure obligations for renters or lessees. For this reason, the cross-reference has been  
6 updated to refer only to proposed Section 68700.

7 **Absent comment, this proposed cross-reference update will be presumed correct.**

8 **§ 2782.6 (amended). Indemnification for hazardous materials services**

9 SEC. \_\_\_. Section 2782.6 of the Civil Code is amended to read:

10 2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to  
11 indemnify a professional engineer or geologist or the agents, servants, independent  
12 contractors, subsidiaries, or employees of that engineer or geologist from liability  
13 as described in Section 2782 in providing hazardous materials identification,  
14 evaluation, preliminary assessment, design, remediation services, or other services  
15 of the types described in Sections ~~25322 and 25323~~ 68125 and 68135 of the Health  
16 and Safety Code or the federal National Oil and Hazardous Substances Pollution  
17 Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are  
18 satisfied:

19 (1) The services in whole or in part address subterranean contamination or other  
20 concealed conditions caused by the hazardous materials.

21 (2) The promisor is responsible, or potentially responsible, for all or part of the  
22 contamination.

23 (b) The indemnification described in this section is valid only for damages arising  
24 from, or related to, subterranean contamination or concealed conditions, and is not  
25 applicable to the first two hundred fifty thousand dollars (\$250,000) of liability or a  
26 greater amount as is agreed to by the parties.

27 (c) This section does not authorize contracts for indemnification, by promisors  
28 specified in paragraph (2) of subdivision (a), of any liability of a promisee arising  
29 from the gross negligence or willful misconduct of the promisee.

30 (d) “Hazardous materials,” as used in this section, means any hazardous or toxic  
31 substance, material, or waste that is or becomes subject to regulation by any agency  
32 of the state, any municipality or political subdivision of the state, or the United  
33 States. “Hazardous materials” includes, but is not limited to, any material or  
34 substance that is any of the following:

35 (1) A hazardous substance, as defined in ~~Section 25316~~ subdivision (a) of Section  
36 68075 of the Health and Safety Code.

37 (2) Hazardous material, as defined in subdivision (j) of Section 25501 of the  
38 Health and Safety Code.

39 (3) A regulated substance, as defined in subdivision (j) of Section 25532 of the  
40 Health and Safety Code.

41 (4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

42 (5) Extremely hazardous waste, as defined in Section 25115 of the Health and  
43 Safety Code.

1 (6) Petroleum.

2 (7) Asbestos.

3 (8) Designated as a hazardous substance for purposes of Section 311 of the  
4 Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

5 (9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal  
6 Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec.  
7 6903).

8 (10) A hazardous substance, as defined by subsection (14) of Section 101 of the  
9 federal Comprehensive Environmental Response, Compensation, and Liability Act  
10 of 1980, as amended (42 U.S.C. Sec. 9601).

11 (11) A regulated substance, as defined by subsection (2) of Section 9001 of the  
12 federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

13 (e) Nothing in this section shall be construed to alter, modify, or otherwise affect  
14 the liability of the promisor or promisee, under an indemnity agreement meeting the  
15 criteria of this section, to third parties for damages for death or bodily injury to  
16 persons, injury to property, or any other loss, damage, or expense.

17 (f) This section does not apply to public entities, as defined by Section 811.2 of  
18 the Government Code.

19 **Comment.** Subdivisions (a) and (d) of Section 2782.6 are amended to update cross-references  
20 in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
21 25300) of Division 20 of the Health and Safety Code.

22 CODE OF CIVIL PROCEDURE

23 **§ 338.1 (amended). Statute of limitations**

24 SEC. \_\_. Section 338.1 of the Code of Civil Procedure is amended to read:

25 338.1. An action for civil penalties or punitive damages authorized under Chapter  
26 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section  
27 25270), Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8 (commencing~~  
28 ~~with Section 25300)~~, or Chapter 6.95 (commencing with Section 25500) of Division  
29 20 of , or Part 2 (commencing with Section 68000) of Division 45 of, the Health  
30 and Safety Code shall be commenced within five years after the discovery by the  
31 agency bringing the action of the facts constituting the grounds for commencing the  
32 action.

33 **Comment.** Section 338.1 is amended to update cross-references in accordance with the  
34 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
35 the Health and Safety Code.

36 **§ 726.5 (amended). Election of secured lender regarding environmentally impaired real**  
37 **property security**

38 SEC. \_\_. Section 726.5 of the Code of Civil Procedure is amended to read:

39 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision  
40 of law, except subdivision (d) of this section, a secured lender may elect between

1 the following where the real property security is environmentally impaired and the  
2 borrower's obligations to the secured lender are in default:

3 (1)(A) Waiver of its lien against (i) any parcel of real property security that is  
4 environmentally impaired or is an affected parcel, and (ii) all or any portion of the  
5 fixtures and personal property attached to the parcels; and

6 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including  
7 reduction of its claim against the borrower to judgment, and (ii) any other rights and  
8 remedies permitted by law.

9 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust  
10 or mortgage and, if applicable, a lien against fixtures or personal property attached  
11 to the real property security, and (ii) any other rights and remedies permitted by law.

12 (b) Before the secured lender may waive its lien against any parcel of real property  
13 security pursuant to paragraph (1) of subdivision (a) on the basis of the  
14 environmental impairment contemplated by paragraph (3) of subdivision (e), (i) the  
15 secured lender shall provide written notice of the default to the borrower, and (ii)  
16 the value of the subject real property security shall be established and its  
17 environmentally impaired status shall be confirmed by an order of a court of  
18 competent jurisdiction in an action brought by the secured lender against the  
19 borrower. The complaint for a valuation and confirmation action may include causes  
20 of action for a money judgment for all or part of the secured obligation, in which  
21 case the waiver of the secured lender's liens under paragraph (1) of subdivision (a)  
22 shall result only if and when a final money judgment is obtained against the  
23 borrower.

24 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)  
25 of subdivision (a) and the borrower's obligations are also secured by other real  
26 property security, fixtures, or personal property, the secured lender shall first  
27 foreclose against the additional collateral to the extent required by applicable law in  
28 which case the amount of the judgment of the secured lender pursuant to paragraph  
29 (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or  
30 subdivision (b) of Section 726 apply to the foreclosures of additional real property  
31 security. The borrower may waive or modify the foreclosure requirements of this  
32 subdivision provided that the waiver or modification is in writing and signed by the  
33 borrower after default.

34 (d) Subdivision (a) shall be inapplicable if all of the following are true:

35 (1) The release or threatened release was not knowingly or negligently caused or  
36 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the  
37 following:

38 (A) The borrower or any related party.

39 (B) Any affiliate or agent of the borrower or any related party.

40 (2) In conjunction with the making, renewal, or modification of the loan,  
41 extension of credit, guaranty, or other obligation secured by the real property  
42 security, neither the borrower, any related party, nor any affiliate or agent of either  
43 the borrower or any related party had actual knowledge or notice of the release or

1 threatened release, or if a person had knowledge or notice of the release or  
2 threatened release, the borrower made written disclosure thereof to the secured  
3 lender after the secured lender's written request for information concerning the  
4 environmental condition of the real property security, or the secured lender  
5 otherwise obtained actual knowledge thereof, prior to the making, renewal, or  
6 modification of the obligation.

7 (e) For purposes of this section:

8 (1) "Affected parcel" means any portion of a parcel of real property security that  
9 is (A) contiguous to the environmentally impaired parcel, even if separated by roads,  
10 streets, utility easements, or railroad rights-of-way, (B) part of an approved or  
11 proposed subdivision within the meaning of Section 66424 of the Government  
12 Code, of which the environmentally impaired parcel is also a part, or (C) within  
13 2,000 feet of the environmentally impaired parcel.

14 (2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a  
15 mortgage, where the deed of trust or mortgage encumbers real property security and  
16 secures the performance of the trustor or mortgagor under a loan, extension of credit,  
17 guaranty, or other obligation. The term includes any successor-in-interest of the  
18 trustor or mortgagor to the real property security before the deed of trust or mortgage  
19 has been discharged, reconveyed, or foreclosed upon.

20 (3) "Environmentally impaired" means that the estimated costs to clean up and  
21 remediate a past or present release or threatened release of any hazardous substance  
22 into, onto, beneath, or from the real property security, not disclosed in writing to, or  
23 otherwise actually known by, the secured lender prior to the making of the loan or  
24 extension of credit secured by the real property security, exceeds 25 percent of the  
25 higher of the aggregate fair market value of all security for the loan or extension of  
26 credit (A) at the time of the making of the loan or extension of credit, or (B) at the  
27 time of the discovery of the release or threatened release by the secured lender. For  
28 the purposes of this definition, the estimated cost to clean up and remediate the  
29 contamination caused by the release or threatened release shall include only those  
30 costs that would be incurred reasonably and in good faith, and fair market value  
31 shall be determined without giving consideration to the release or threatened release,  
32 and shall be exclusive of the amount of all liens and encumbrances against the  
33 security that are senior in priority to the lien of the secured lender. Notwithstanding  
34 the foregoing, the real property security for any loan or extension of credit secured  
35 by a single parcel of real property which is included in the National Priorities List  
36 pursuant to Section 9605 of Title 42 of the United States Code, or in any list  
37 published by the Department of Toxic Substances Control pursuant to ~~subdivision~~  
38 ~~(b) of Section 25356~~ Section 68760 of the Health and Safety Code, shall be deemed  
39 to be environmentally impaired.

40 (4) "Hazardous substance" means any of the following:

41 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of  
42 the Health and Safety Code.

1 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water  
2 Code.

3 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas  
4 liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

5 (5) “Real property security” means any real property and improvements, other  
6 than a separate interest and any related interest in the common area of a residential  
7 common interest development, as the terms “separate interest,” “common area,” and  
8 “common interest development” are defined in Sections 4095, 4100, and 4185 of  
9 the Civil Code, or real property which contains only 1 to 15 dwelling units, which  
10 in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably  
11 contemplated by the parties to the deed of trust or mortgage, for residential purposes  
12 as well as limited agricultural or commercial purposes incidental thereto, and (B) is  
13 the subject of an issued certificate of occupancy unless the dwelling is to be owned  
14 and occupied by the borrower.

15 (6) “Related party” means any person who shares an ownership interest with the  
16 borrower in the real property security, or is a partner or joint venturer with the  
17 borrower in a partnership or joint venture, the business of which includes the  
18 acquisition, development, use, lease, or sale of the real property security.

19 (7) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,  
20 discharging, injecting, escaping, leaching, dumping, or disposing into the  
21 environment, including continuing migration, of hazardous substances into, onto, or  
22 through soil, surface water, or groundwater. The term does not include actions  
23 directly relating to the incorporation in a lawful manner of building materials into a  
24 permanent improvement to the real property security.

25 (8) “Secured lender” means the beneficiary under a deed of trust against the real  
26 property security, or the mortgagee under a mortgage against the real property  
27 security, and any successor-in-interest of the beneficiary or mortgagee to the deed  
28 of trust or mortgage.

29 (f) This section shall not be construed to invalidate or otherwise affect in any  
30 manner any rights or obligations arising under contract in connection with a loan or  
31 extension of credit, including, without limitation, provisions limiting recourse.

32 (g) This section shall only apply to loans, extensions of credit, guaranties, or other  
33 obligations secured by real property security made, renewed, or modified on or after  
34 January 1, 1992.

35 **Comment.** Section 726.5(e)(3) is amended to update cross-references in accordance with the  
36 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
37 the Health and Safety Code.

38 **§ 917.15 (amended). Exceptions to stay of enforcement for appeals**

39 SEC. \_\_. Section 917.15 of the Code of Civil Procedure is amended to read:

40 917.15. The perfecting of an appeal shall not stay enforcement of the judgment or  
41 order in the trial court if the judgment or order appealed from, or the administrative

1 order which is the subject of the trial court proceeding, was issued pursuant to either  
2 of the following:

3 (a) ~~Subdivision (a) of Section 25358.3~~ Section 68870 of the Health and Safety  
4 Code and ordered a responsible party to take appropriate removal or remedial  
5 actions in response to a release or a threatened release of a hazardous substance.

6 (b) Section 25181 of the Health and Safety Code and ordered the party to comply  
7 with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health  
8 and Safety Code or any rule, regulation, permit, covenant, standard, requirement, or  
9 order issued, adopted or executed pursuant to that Chapter 6.5.

10 **Comment.** Section 917.15 is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 **§ 1263.710 (amended). Definitions**

14 SEC. \_\_. Section 1263.710 of the Code of Civil Procedure is amended to read:

15 1263.710. (a) As used in this article, “remedial action” and “removal” shall have  
16 the meanings accorded to those terms in Sections ~~25322 and 25323~~, 68125 and  
17 68135, respectively, of the Health and Safety Code.

18 (b) As used in this article, “required action” means any removal or other remedial  
19 action with regard to hazardous materials that is necessary to comply with any  
20 requirement of federal, state, or local law.

21 **Comment.** Section 1263.710 is amended to update cross-references in accordance with the  
22 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
23 the Health and Safety Code.

24 EDUCATION CODE

25 **§ 17210 (amended). Definitions**

26 SEC. \_\_. Section 17210 of the Education Code is amended to read:

27 17210. As used in this article, the following terms have the following meanings:

28 (a) “Administering agency” means any agency designated pursuant to Section  
29 25502 of the Health and Safety Code.

30 (b) “Environmental assessor” means an environmental professional as defined in  
31 Section 312.10 of Title 40 of the Code of Federal Regulations.

32 (c) “Handle” has the meaning the term is given in Article 1 (commencing with  
33 Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

34 (d) “Hazardous air emissions” means emissions into the ambient air of air  
35 contaminants that have been identified as a toxic air contaminant by the State Air  
36 Resources Board or by the air pollution control officer for the jurisdiction in which  
37 the project is located. As determined by the air pollution control officer, hazardous  
38 air emissions also means emissions into the ambient air from any substance  
39 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and  
40 Safety Code.

1 (e) “Hazardous material” has the meaning the term is given in subdivision (d) of  
2 Section 25260 of the Health and Safety Code.

3 (f) “Operation and maintenance,” “removal action work plan,” “respond,”  
4 “response,” “response action,” and “site” have the meanings those terms are given  
5 in ~~Article 2 (commencing with Section 25310) of the state act. Article 3~~  
6 (commencing with Section 68035) of Chapter 1 of Part 2 of Division 45 of the  
7 Health and Safety Code.

8 (g) “Phase I environmental assessment” means a preliminary assessment of a  
9 property to determine whether there has been or may have been a release of a  
10 hazardous material, or whether a naturally occurring hazardous material is present,  
11 based on reasonably available information about the property and the area in its  
12 vicinity. A phase I environmental assessment shall meet the most current  
13 requirements adopted by the American Society for Testing and Materials (ASTM)  
14 for Standard Practice for Environmental Site Assessments: Phase I Environmental  
15 Site Assessment Process or meet the requirements of Part 312 (commencing with  
16 Section 312.1) of Title 40 of the Code of Federal Regulations. That ASTM Standard  
17 Practice for Environmental Site Assessments or the requirements of Part 312  
18 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations  
19 shall satisfy the requirements of this article for conducting a phase I environmental  
20 assessment unless and until the Department of Toxic Substances Control adopts  
21 final regulations that establish guidelines for a phase I environmental assessment  
22 for purposes of schoolsites that impose different requirements.

23 (h) “Preliminary endangerment assessment” means an activity that is performed  
24 to determine whether current or past hazardous material management practices or  
25 waste management practices have resulted in a release or threatened release of  
26 hazardous materials, or whether naturally occurring hazardous materials are present,  
27 which pose a threat to children’s health, children’s learning abilities, public health  
28 or the environment. A preliminary endangerment assessment requires sampling and  
29 analysis of a site, a preliminary determination of the type and extent of hazardous  
30 material contamination of the site, and a preliminary evaluation of the risks that the  
31 hazardous material contamination of a site may pose to children’s health, public  
32 health, or the environment, and shall be conducted in a manner that complies with  
33 the guidelines published by the Department of Toxic Substances Control entitled  
34 “Preliminary Endangerment Assessment: Guidance Manual,” including any  
35 amendments that are determined by the Department of Toxic Substances Control to  
36 be appropriate to address issues that are unique to schoolsites.

37 (i) “Proposed schoolsite” means real property acquired or to be acquired or  
38 proposed for use as a schoolsite, prior to its occupancy as a school.

39 (j) “Regulated substance” means any material defined in subdivision (g) of  
40 Section 25532 of the Health and Safety Code.

41 (k) “Release” has the same meaning the term is given in ~~Article 2 (commencing~~  
42 ~~with Section 25310) of Chapter 6.8 of Division 20 Article 3 (commencing with~~  
43 Section 68035) of Chapter 1 of Part 2 of Division 45 of the Health and Safety Code,

1 and includes a release described in ~~subdivision (d) of Section 25321~~ paragraph (5)  
2 of subdivision (b) of Section 68105 of the Health and Safety Code.

3 (l) “Remedial action plan” means a plan approved by the Department of Toxic  
4 Substances Control pursuant to ~~Section 25356.4~~ Article 12 (commencing with  
5 Section 69190) of Chapter 5 of Part 2 of Division 45 of the Health and Safety Code.

6 (m) “State act” means the Carpenter-Presley-Tanner Hazardous Substance  
7 Account Act (~~Chapter 6.8 (commencing with Section 25300)~~ of Division 20 (Part 2  
8 commencing with Section 68000) of Division 45 of the Health and Safety Code).

9 **Comment.** Subdivisions (f), (k), (l), and (m) of Section 17210 are amended to update cross-  
10 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with  
11 Section 25300) of Division 20 of the Health and Safety Code.

12 **§ 17213 (amended). Schoolsite acquisition**

13 SEC. \_\_. Section 17213 of the Education Code is amended to read:

14 17213. The governing board of a school district may not approve a project  
15 involving the acquisition of a schoolsite by a school district, unless all of the  
16 following occur:

17 (a) The school district, as the lead agency, as defined in Section 21067 of the  
18 Public Resources Code, determines that the property purchased or to be built upon  
19 is not any of the following:

20 (1) The site of a current or former hazardous waste disposal site or solid waste  
21 disposal site, unless if the site was a former solid waste disposal site, the governing  
22 board of the school district concludes that the wastes have been removed.

23 (2) A hazardous substance release site identified by the Department of Toxic  
24 Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5  
25 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45 of the  
26 Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8~~  
27 ~~(commencing with Section 25300)~~ of Division 20 Part 2 (commencing with Section  
28 68000) of Division 45 of the Health and Safety Code.

29 (3) A site that contains one or more pipelines, situated underground or  
30 aboveground, that carries hazardous substances, extremely hazardous substances,  
31 or hazardous wastes, unless the pipeline is a natural gas line that is used only to  
32 supply natural gas to that school or neighborhood.

33 (b) The school district, as the lead agency, as defined in Section 21067 of the  
34 Public Resources Code, in preparing the environmental impact report or negative  
35 declaration has consulted with the administering agency in which the proposed  
36 schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code  
37 of Regulations, and with any air pollution control district or air quality management  
38 district having jurisdiction in the area, to identify both permitted and nonpermitted  
39 facilities within that district’s authority, including, but not limited to, freeways and  
40 other busy traffic corridors, large agricultural operations, and railyards, within one-  
41 fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to  
42 emit hazardous air emissions, or to handle hazardous or extremely hazardous

1 materials, substances, or waste. The school district, as the lead agency, shall include  
2 a list of the locations for which information is sought.

3 (c) The governing board of the school district makes one of the following written  
4 findings:

5 (1) Consultation identified none of the facilities or significant pollution sources  
6 specified in subdivision (b).

7 (2) The facilities or other pollution sources specified in subdivision (b) exist, but  
8 one of the following conditions applies:

9 (A) The health risks from the facilities or other pollution sources do not and will  
10 not constitute an actual or potential endangerment of public health to persons who  
11 would attend or be employed at the school.

12 (B) The governing board finds that corrective measures required under an existing  
13 order by another governmental entity that has jurisdiction over the facilities or other  
14 pollution sources will, before the school is occupied, result in the mitigation of all  
15 chronic or accidental hazardous air emissions to levels that do not constitute an  
16 actual or potential endangerment of public health to persons who would attend or  
17 be employed at the proposed school. If the governing board makes this finding, the  
18 governing board shall also make a subsequent finding, prior to the occupancy of the  
19 school, that the emissions have been mitigated to these levels.

20 (C) For a schoolsite with a boundary that is within 500 feet of the edge of the  
21 closest traffic lane of a freeway or other busy traffic corridor, the governing board  
22 of the school district determines, through analysis pursuant to paragraph (2) of  
23 subdivision (b) of Section 44360 of the Health and Safety Code, based on  
24 appropriate air dispersion modeling, and after considering any potential mitigation  
25 measures, that the air quality at the proposed site is such that neither short-term nor  
26 long-term exposure poses significant health risks to pupils.

27 (D) The governing board finds that neither of the conditions set forth in  
28 subparagraph (B) or (C) can be met, and the school district is unable to locate an  
29 alternative site that is suitable due to a severe shortage of sites that meet the  
30 requirements in subdivision (a) of Section 17213. If the governing board makes this  
31 finding, the governing board shall adopt a statement of Overriding Considerations  
32 pursuant to Section 15093 of Title 14 of the California Code of Regulations.

33 (d) As used in this section:

34 (1) “Hazardous air emissions” means emissions into the ambient air of air  
35 contaminants that have been identified as a toxic air contaminant by the State Air  
36 Resources Board or by the air pollution control officer for the jurisdiction in which  
37 the project is located. As determined by the air pollution control officer, hazardous  
38 air emissions also means emissions into the ambient air from any substance  
39 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and  
40 Safety Code.

41 (2) “Hazardous substance” means any substance defined in ~~Section 25316~~  
42 subdivision (a) of Section 68075 of the Health and Safety Code.

1 (3) “Extremely hazardous substances” means any material defined pursuant to  
2 paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

3 (4) “Hazardous waste” means any waste defined in Section 25117 of the Health  
4 and Safety Code.

5 (5) “Hazardous waste disposal site” means any site defined in Section 25114 of  
6 the Health and Safety Code.

7 (6) “Administering agency” means any agency designated pursuant to Section  
8 25502 of the Health and Safety Code.

9 (7) “Handle” means handle as defined in Article 1 (commencing with Section  
10 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

11 (8) “Facilities” means any source with a potential to use, generate, emit or  
12 discharge hazardous air pollutants, including, but not limited to, pollutants that meet  
13 the definition of a hazardous substance, and whose process or operation is identified  
14 as an emission source pursuant to the most recent list of source categories published  
15 by the State Air Resources Board.

16 (9) “Freeway or other busy traffic corridors” means those roadways that, on an  
17 average day, have traffic in excess of 50,000 vehicles in a rural area as defined in  
18 Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area,  
19 as defined in Section 50104.7 of the Health and Safety Code.

20 **Comment.** Section 17213(a)(2) and (d)(2) are amended to update cross-references in accordance  
21 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
22 Division 20 of the Health and Safety Code.

23 **§ 17213.1 (amended). Requirement for schoolsite acquisition for receipt of state funding**

24 SEC. \_\_. Section 17213.1 of the Education Code is amended to read:

25 17213.1. As a condition of receiving state funding pursuant to Chapter 12.5  
26 (commencing with Section 17070.10), the governing board of a school district shall  
27 comply with subdivision (a), and is not required to comply with subdivision (a) of  
28 Section 17213, prior to the acquisition of a schoolsite, or if the school district owns  
29 or leases a schoolsite, prior to the construction of a project.

30 (a) Prior to acquiring a schoolsite, the governing board shall contract with an  
31 environmental assessor to supervise the preparation of, and sign, a Phase I  
32 environmental assessment of the proposed schoolsite unless the governing board  
33 decides to proceed directly to a preliminary endangerment assessment, in which  
34 case it shall comply with paragraph (4).

35 (1) The Phase I environmental assessment shall contain one of the following  
36 recommendations:

37 (A) A further investigation of the site is not required.

38 (B) A preliminary endangerment assessment is needed, including sampling or  
39 testing, to determine the following:

40 (i) If a release of hazardous material has occurred and, if so, the extent of the  
41 release.

42 (ii) If there is the threat of a release of hazardous materials.

1 (iii) If a naturally occurring hazardous material is present.

2 (2) If the Phase I environmental assessment concludes that further investigation  
3 of the site is not required, the signed assessment, proof that the environmental  
4 assessor meets the qualifications specified in subdivision (b) of Section 17210, and  
5 the renewal fee shall be submitted to the Department of Toxic Substances Control.  
6 The Department of Toxic Substances Control shall conduct its review and approval,  
7 within 30 calendar days of its receipt of that assessment, proof of qualifications, and  
8 the renewal fee. In those instances in which the Department of Toxic Substances  
9 Control requests additional information after receipt of the Phase I environmental  
10 assessment pursuant to paragraph (3), the Department of Toxic Substances Control  
11 shall conduct its review and approval within 30 calendar days of its receipt of the  
12 requested additional information. If the Department of Toxic Substances Control  
13 concurs with the conclusion of the Phase I environmental assessment that a further  
14 investigation of the site is not required, the Department of Toxic Substances Control  
15 shall approve the Phase I environmental assessment and shall notify, in writing, the  
16 State Department of Education and the governing board of the school district of the  
17 approval.

18 (3) If the Department of Toxic Substances Control determines that the Phase I  
19 environmental assessment is not complete or disapproves the Phase I environmental  
20 assessment, the department shall inform the school district of the decision, the basis  
21 for the decision, and actions necessary to secure department approval of the Phase I  
22 environmental assessment. The school district shall take actions necessary to secure  
23 the approval of the Phase I environmental assessment, elect to conduct a preliminary  
24 endangerment assessment, or elect not to pursue the acquisition or the construction  
25 project. To facilitate completion of the Phase I environmental assessment, the  
26 information required by this paragraph may be provided by telephonic or electronic  
27 means.

28 (4)(A) If the Department of Toxic Substances Control concludes after its review  
29 of a Phase I environmental assessment pursuant to this section that a preliminary  
30 endangerment assessment is needed, the Department of Toxic Substances Control  
31 shall notify, in writing, the State Department of Education and the governing board  
32 of the school district of that decision and the basis for that decision. The school  
33 district shall submit to the State Department of Education the Phase I environmental  
34 assessment and requested additional information, if any, that was reviewed by the  
35 Department of Toxic Substances Control pursuant to that subparagraph. Submittal  
36 of the Phase I assessment and additional information, if any, to the State Department  
37 of Education shall be prior to the State Department of Education issuance of final  
38 site or plan approvals ~~affected~~ affected by that Phase I assessment.

39 (B) If the Phase I environmental assessment concludes that a preliminary  
40 endangerment assessment is needed, or if the Department of Toxic Substances  
41 Control concludes after it reviews a Phase I environmental assessment pursuant to  
42 this section that a preliminary endangerment assessment is needed, the school  
43 district shall either contract with an environmental assessor to supervise the

1 preparation of, and sign, a preliminary endangerment assessment of the proposed  
2 schoolsite and enter into an agreement with the Department of Toxic Substances  
3 Control to oversee the preparation of the preliminary endangerment assessment or  
4 elect not to pursue the acquisition or construction project. The agreement entered  
5 into with the Department of Toxic Substances Control may be entitled an  
6 “Environmental Oversight Agreement” and shall reference this paragraph. A school  
7 district may, with the concurrence of the Department of Toxic Substances Control,  
8 enter into an agreement with the Department of Toxic Substances Control to oversee  
9 the preparation of a preliminary endangerment assessment without first having  
10 prepared a Phase I environmental assessment. Upon request from the school district,  
11 the Director of ~~the Department~~ of Toxic Substances Control shall exercise its  
12 authority to designate a person to enter the site and inspect and obtain samples  
13 pursuant to ~~Section 25358.1~~ Article 4 (commencing with Section 68435) of Chapter  
14 3 of Part 2 of Division 45 of the Health and Safety Code, if the director determines  
15 that the exercise of that authority will assist in expeditiously completing the  
16 preliminary endangerment assessment. The preliminary endangerment assessment  
17 shall contain one of the following conclusions:

18 (i) A further investigation of the site is not required.

19 (ii) A release of hazardous materials has occurred, and if so, the extent of the  
20 release, that there is the threat of a release of hazardous materials, or that a naturally  
21 occurring hazardous material is present, or any combination thereof.

22 (5) The school district shall submit the preliminary endangerment assessment to  
23 the Department of Toxic Substances Control for its review and approval and to the  
24 State Department of Education for its files. The school district may entitle a  
25 document that is meant to fulfill the requirements of a preliminary endangerment  
26 assessment a “preliminary environmental assessment” and that document shall be  
27 deemed to be a preliminary endangerment assessment if it specifically refers to the  
28 statutory provisions whose requirements it intends to meet and the document meets  
29 the requirements of a preliminary endangerment assessment.

30 (6) At the same time a school district submits a preliminary endangerment  
31 assessment to the Department of Toxic Substances Control pursuant to paragraph  
32 (5), the school district shall publish a notice that the assessment has been submitted  
33 to the department in a local newspaper of general circulation, and shall post the  
34 notice in a prominent manner at the proposed schoolsite that is the subject of that  
35 notice. The notice shall state the school district’s determination to make the  
36 preliminary endangerment assessment available for public review and comment  
37 pursuant to subparagraph (A) or ~~(B)~~: (C):

38 (A) If the school district chooses to make the assessment available for public  
39 review and comment pursuant to this subparagraph, it shall offer to receive written  
40 comments for a period of at least 30 calendar days after the assessment is submitted  
41 to the Department of Toxic Substances Control, commencing on the date the notice  
42 is originally published, and shall hold a public hearing to receive further comments.

1 The school district shall make all of the following documents available to the public  
2 upon request through the time of the public hearing:

3 (i) The preliminary endangerment assessment.

4 (ii) The changes requested by the Department of Toxic Substances Control for the  
5 preliminary endangerment assessment, if any.

6 (iii) Any correspondence between the school district and the Department of Toxic  
7 Substances Control that relates to the preliminary endangerment assessment.

8 ~~(B)~~ (A) For the purposes of ~~this~~ subparagraph (A), the notice of the public hearing  
9 shall include the date and location of the public hearing, and the location where the  
10 public may review the documents described in clauses (i) to (iii), inclusive of  
11 subparagraph (A). If the preliminary endangerment assessment is revised or altered  
12 following the public hearing, the school district shall make those revisions or  
13 alterations available to the public. The school district shall transmit a copy of all  
14 public comments received by the school district on the preliminary endangerment  
15 assessment to the Department of Toxic Substances Control. The Department of  
16 Toxic Substances Control shall complete its review of the preliminary  
17 endangerment assessment and public comments received thereon and shall either  
18 approve or disapprove the assessment within 30 calendar days of the close of the  
19 public review period. If the Department of Toxic Substances Control determines  
20 that it is likely to disapprove the assessment prior to its receipt of the public  
21 comments, it shall inform the school district of that determination and of any action  
22 that the school district is required to take for the Department of Toxic Substances  
23 Control to approve the assessment.

24 ~~(B)~~ (C) If the school district chooses to make the preliminary endangerment  
25 assessment available for public review and comment pursuant to this subparagraph,  
26 the Department of Toxic Substances Control shall complete its review of the  
27 assessment within 60 calendar days of receipt of the assessment and shall either  
28 return the assessment to the school district with comments and requested  
29 modifications or requested further assessment or concur with the adequacy of the  
30 assessment pending review of public comment. If the Department of Toxic  
31 Substances Control concurs with the adequacy of the assessment, and the school  
32 district proposes to proceed with site acquisition or a construction project, the school  
33 district shall make the assessment available to the public on the same basis and at  
34 the same time it makes available the draft environmental impact report or negative  
35 declaration pursuant to the California Environmental Quality Act (Division 13  
36 (commencing with Section 21000) of the Public Resources Code) for the site, unless  
37 the document developed pursuant to the California Environmental Quality Act  
38 (Division 13 (commencing with Section 21000) of the Public Resources Code) will  
39 not be made available until more than 90 days after the assessment is approved, in  
40 which case the school district shall, within 60 days of the approval of the assessment,  
41 separately publish a notice of the availability of the assessment for public review in  
42 a local newspaper of general circulation. The school district shall hold a public  
43 hearing on the preliminary endangerment assessment and the draft environmental

1 impact report or negative declaration at the same time, pursuant to the California  
2 Environmental Quality Act (Division 13 (commencing with Section 21000) of the  
3 Public Resources Code). All public comments pertaining to the preliminary  
4 endangerment assessment shall be forwarded to the Department of Toxic  
5 Substances Control immediately. The Department of Toxic Substances Control  
6 shall review the public comments forwarded by the school district and shall approve  
7 or disapprove the preliminary endangerment assessment within 30 days of the  
8 district's approval action of the environmental impact report or the negative  
9 declaration.

10 (7) The school district shall comply with the public participation requirements of  
11 Sections ~~25358.7 and 25358.7.1~~ 68930, 68935, and 68950 to 68970, inclusive, of  
12 the Health and Safety Code and other applicable provisions of the state act with  
13 respect to those response actions only if further response actions beyond a  
14 preliminary endangerment assessment are required and the district determines that  
15 it will proceed with the acquisition or construction project.

16 (8) If the Department of Toxic Substances Control disapproves the preliminary  
17 endangerment assessment, it shall inform the district of the decision, the basis for  
18 the decision, and actions necessary to secure the Department of Toxic Substances  
19 Control approval of the assessment. The school district shall take actions necessary  
20 to secure the approval of the Department of Toxic Substances Control of the  
21 preliminary endangerment assessment or elect not to pursue the acquisition or  
22 construction project.

23 (9) If the preliminary endangerment assessment determines that a further  
24 investigation of the site is not required and the Department of Toxic Substances  
25 Control approves this determination, it shall notify the State Department of  
26 Education and the school district of its approval. The school district may then  
27 proceed with the acquisition or construction project.

28 (10) If the preliminary endangerment assessment determines that a release of  
29 hazardous material has occurred, that there is the threat of a release of hazardous  
30 materials, that a naturally occurring hazardous material is present, or any  
31 combination thereof, that requires further investigation, and the Department of  
32 Toxic Substances Control approves this determination, the school district may elect  
33 not to pursue the acquisition or construction project. If the school district elects to  
34 pursue the acquisition or construction project, it shall do all of the following:

35 (A) Prepare a financial analysis that estimates the cost of response action that will  
36 be required at the proposed schoolsite.

37 (B) Assess the benefits that accrue from using the proposed schoolsite when  
38 compared to the use of alternative schoolsites, if any.

39 (C) Obtain the approval of the State Department of Education that the proposed  
40 schoolsite meets the schoolsite selection standards adopted by the State Department  
41 of Education pursuant to subdivision (b) of Section 17251.

42 (D) Evaluate the suitability of the proposed schoolsite in light of the  
43 recommended alternative schoolsite locations in order of merit if the school district

1 has requested the assistance of the State Department of Education, based upon the  
2 standards of the State Department of Education, pursuant to subdivision (a) of  
3 Section 17251.

4 (11) The school district shall reimburse the Department of Toxic Substances  
5 Control for all of the department’s response costs.

6 (b) The costs incurred by the school districts when complying with this section  
7 are allowable costs for purposes of an applicant under Chapter 12.5 (commencing  
8 with Section 17070.10) of Part 10 and may be reimbursed in accordance with  
9 Section 17072.13.

10 (c) A school district that releases a Phase I environmental assessment, a  
11 preliminary endangerment assessment, or information concerning either of these  
12 assessments, any of which is required by this section, may not be held liable in any  
13 action filed against the school district for making either of these assessments  
14 available for public review.

15 (d) The changes made to this section by the act amending this section during the  
16 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition  
17 project or a school construction project, if either of the following occurred on or  
18 before the effective date of the act amending this section during the 2001 portion of  
19 the 2001–02 Regular Session:

20 (1) The final preliminary endangerment assessment for the project was approved  
21 by the Department of Toxic Substances Control pursuant to this section as this  
22 section read on the date of the approval.

23 (2) The school district seeking state funding for the project completed a public  
24 hearing for the project pursuant to this section, as this section read on the date of the  
25 hearing.

26 **Comment.** Section 17213.1(a)(4)(B) and (a)(7) are amended to update cross-references in  
27 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
28 25300) of Division 20 of the Health and Safety Code.

29 This section is also amended to correct a reference to the “Director of the Department of Toxic  
30 Substances Control” to refer instead to the “Director of Toxic Substances Control.” See 1991  
31 Governor’s Reorganization Plan No. 1 of 1991 § 146 (proposed Health & Safety Code § 58002).

32 This section is also amended to label an undesignated subparagraph and make a technical change.

33 **Note.** Section 17213.1(a)(4)(B) cross-refers to authority to inspect a site and obtain samples  
34 pursuant to Health and Safety Code Section 25358.1. Section 25358.1 has been proposed for  
35 recodification, along with other provisions, as an article. Along with the provisions of Section  
36 25358.1, the article contains provisions allowing the department to issue an order directing  
37 compliance with the requirements in Section 25358.1 for information disclosure (proposed Section  
38 68465) and penalties for violations related to Section 25358.1 (proposed Section 68470). These  
39 provisions do not broaden the department’s investigatory authority under Section 25358.1, but  
40 provide a means for enforcing and ensuring compliance with the department’s exercise of its  
41 powers under Section 25358.1. For this reason, the cross-reference to Section 25358.1 has been  
42 updated to refer to the article as a whole. Given that the content of the additional provisions,  
43 described above, does not relate to the purpose of this cross-reference, the proposed cross-reference  
44 update would be nonsubstantive. **Absent comment, this proposed cross-reference update will**  
45 **be presumed correct.**



1 and timely cleanup, the emergency reserve account of the Toxic Substances Control  
2 Account in the General Fund shall be used to provide funding for the cleanup  
3 pursuant to Section 25354 68875 of the Health and Safety Code. When those or  
4 other funds are not available, moneys in the Fish and Wildlife Pollution Account  
5 shall be available, in accordance with subdivision (b) of Section 12017, for funding  
6 the cleanup expenses.

7 **Comment.** Section 12015 is amended to update cross-references in accordance with the  
8 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
9 the Health and Safety Code.

10 **Note.** Section 12015 cross-refers to Section 25354 of the Health and Safety Code. Section 25354  
11 has been proposed for restatement as three provisions (proposed Sections 68240, 68580, and  
12 68875). This cross-reference has been updated to refer only to the provision authorizing  
13 expenditures for cleanup of hazardous substance releases (proposed Section 68875). The remaining  
14 provisions, which relate to appropriations and the funding of the emergency reserve account  
15 (proposed Section 68240) and a reporting requirement (proposed Section 68580), do not appear to  
16 be relevant to this cross-reference and will be omitted from the cross-reference.

17 **Absent comment, this proposed cross-reference update will be presumed correct.**

18 **§ 12017 (amended). Fish and Wildlife Pollution Account**

19 SEC. \_\_. Section 12017 of the Fish and Game Code is amended to read:

20 12017. (a) Notwithstanding Section 13001, any recovery or settlement of money  
21 received pursuant to the following sections shall be deposited in the Fish and  
22 Wildlife Pollution Account:

23 (1) Section 2014.

24 (2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division  
25 6.

26 (3) Section 12015 or 12016.

27 (4) Chapter 4 (commencing with Section 151) of Division 1.5 of the Harbors and  
28 Navigation Code.

29 (5) Section 13442 of the Water Code.

30 (6) Proceeds or recoveries from pollution and abatement actions.

31 (b) Moneys in the account are continuously appropriated to the department, except  
32 as provided in Section 13230.

33 (c) Funds in the account shall be expended for the following purposes:

34 (1) Abatement, cleanup, and removal of pollutants from the environment.

35 (2) Response coordination, planning, and program management.

36 (3) Resource injury determination.

37 (4) Resource damage assessment.

38 (5) Economic valuation of resources.

39 (6) Restoration or rehabilitation at sites damaged by pollution.

40 (d) Notwithstanding subdivision (c), funds in the account in excess of one million  
41 dollars (\$1,000,000) as of July 1 of each year may also be expended for the  
42 preservation of California plants, wildlife, and fisheries.

1 (e) Funds in the account may be expended for cleanup and abatement if a  
2 reasonable effort has been made to have the responsible party pay cleanup and  
3 abatement costs and funds are not available for disbursement from the emergency  
4 reserve account of the Toxic Substances Control Account in the General Fund  
5 pursuant to Section ~~25354~~ 68875 of the Health and Safety Code.

6 (f) The department may use funds in the account to pay the costs of consultant  
7 contracts for resource injury determination or damage assessment during hazardous  
8 material or oil spill emergencies. These contracts are not subject to Part 2  
9 (commencing with Section 10100) of Division 2 of the Public Contract Code.

10 **Comment.** Section 12017 is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 **Note.** Section 12017 cross-refers to Section 25354 of the Health and Safety Code. Section 25354  
14 has been proposed for restatement as three provisions (proposed Sections 68240, 68580, and  
15 68875). This cross-reference has been updated to refer only to the provision authorizing  
16 expenditures for cleanup of hazardous substance releases (proposed Section 68875). The remaining  
17 provisions, which relate to appropriations and the funding of the emergency reserve account  
18 (proposed Section 68240) and a reporting requirement (proposed Section 68580), do not appear to  
19 be relevant to this cross-reference and will be omitted from the cross-reference.

20 **Absent comment, this proposed cross-reference update will be presumed correct.**

21 GOVERNMENT CODE

22 **§ 6103.10 (amended). Application of Section 6103**

23 SEC. \_\_. Section 6103.10 of the Government Code is amended to read:

24 6103.10. Section 6103 does not apply to any fee or charges required to be paid to  
25 the State Director of Health Services or to the State Board of Equalization pursuant  
26 to Chapter 6.5 (commencing with Section 25100) of, ~~and Chapter 6.8 (commencing~~  
27 ~~with Section 25300) of~~, Division 20 of, and Part 2 (commencing with Section  
28 68000) of Division 45 of, the Health and Safety Code, except as otherwise provided  
29 in paragraph (1) of subdivision (a) of Section 25174.7, subdivision (b) of Section  
30 25205.1, subdivision (n) of Section 25205.7, subdivision (d) of Section 25205.8,  
31 and subdivision (e) of Section 25205.9.

32 **Comment.** Section 6103.10 is amended to update cross-references in accordance with the  
33 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
34 the Health and Safety Code.

35 **§ 6276.24 (amended). Exemptions from disclosure, Hazardous substance tax information to**  
36 **housing authority tenant application**

37 SEC. \_\_. Section 6276.24 of the Government Code is amended to read:

38 Hazardous substance tax information, prohibition against disclosure, Section  
39 43651, Revenue and Taxation Code.

40 Hazardous waste control, business plans, public inspection, Section 25506, Health  
41 and Safety Code.

1 Hazardous waste control, notice of unlawful hazardous waste disposal, Section  
2 25180.5, Health and Safety Code.

3 Hazardous waste control, trade secrets, disclosure of information, Sections 25511  
4 and 25538, Health and Safety Code.

5 Hazardous waste control, trade secrets, procedures for release of information,  
6 ~~Section 25358.2~~, Article 5 (commencing with Section 68480) of Chapter 2 of Part  
7 2 of Division 45 of the Health and Safety Code.

8 Hazardous waste generator report, protection of trade secrets, Sections 25244.21  
9 and 25244.23, Health and Safety Code.

10 Hazardous waste licenseholder disclosure statement, confidentiality of, Section  
11 25186.5, Health and Safety Code.

12 Hazardous waste recycling, information clearing house, confidentiality of trade  
13 secrets, Section 25170, Health and Safety Code.

14 Hazardous waste recycling, list of specified hazardous wastes, trade secrets,  
15 Section 25175, Health and Safety Code.

16 Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and  
17 25180.5, Health and Safety Code.

18 Healing arts licensees, central files, confidentiality, Section 800, Business and  
19 Professions Code.

20 Health authorities, special county, confidentiality of records, Sections 14087.35,  
21 14087.36, and 14087.38, Welfare and Institutions Code.

22 Health care provider disciplinary proceeding, confidentiality of documents,  
23 Section 805.1, Business and Professions Code.

24 Health care service plans, review of quality of care, privileged communications,  
25 Sections 1370 and 1380, Health and Safety Code.

26 Health commissions, special county, confidentiality of peer review proceedings,  
27 rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions  
28 Code.

29 Health facilities, patient's rights of confidentiality, subdivision (c) of Section  
30 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and  
31 Safety Code.

32 Health personnel, data collection by the Office of Statewide Health Planning and  
33 Development, confidentiality of information on individual licentiates, Section  
34 127780, Health and Safety Code.

35 Health plan governed by a county board of supervisors, exemption from  
36 disclosure for records relating to provider rates or payments for a three-year period  
37 after execution of the provider contract, Sections 6254.22 and 54956.87.

38 Hereditary Disorders Act, legislative finding and declaration, confidential  
39 information, Sections 124975 and 124980, Health and Safety Code.

40 Hereditary Disorders Act, rules, regulations, and standards, breach of  
41 confidentiality, Section 124980, Health and Safety Code.

42 HIV, disclosures to blood banks by department or county health officers, Section  
43 1603.1, Health and Safety Code.

1 Home address of public employees and officers in Department of Motor Vehicles,  
2 records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

3 Horse racing, horses, blood or urine test sample, confidentiality, Section 19577,  
4 Business and Professions Code.

5 Hospital district and municipal hospital records relating to contracts with insurers  
6 and service plans, subdivision (t), Section 6254.

7 Hospital final accreditation report, subdivision (s), Section 6254.

8 Housing authorities, confidentiality of rosters of tenants, Section 34283, Health  
9 and Safety Code.

10 Housing authorities, confidentiality of applications by prospective or current  
11 tenants, Section 34332, Health and Safety Code.

12 **Comment.** Section 6276.24 is amended to update cross-references in accordance with the  
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
14 the Health and Safety Code.

15 **§ 6276.44 (amended). Exemptions from disclosure, Taxpayer information to trust company**  
16 **disclosure of confidential information of private trust**

17 SEC. \_\_. Section 6276.44 of the Government Code is amended to read:

18 6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i),  
19 Section 6254.

20 Tax preparer, disclosure of information obtained in business of preparing tax  
21 returns, Section 17530.5, Business and Professions Code.

22 Teacher, credential holder or applicant, information provided to Commission on  
23 Teacher Credentialing, confidentiality of, Section 44341, Education Code.

24 Teacher, certified school personnel examination results, confidentiality of,  
25 Section 44289, Education Code.

26 Telephone answering service customer list, trade secret, Section 16606, Business  
27 and Professions Code.

28 Timber yield tax, disclosure to county assessor, Section 38706, Revenue and  
29 Taxation Code.

30 Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation  
31 Code.

32 Title insurers, confidentiality of notice of noncompliance, Section 12414.14,  
33 Insurance Code.

34 Tobacco products, exemption from disclosure for distribution information  
35 provided to the State Department of Public Health, Section 22954, Business and  
36 Professions Code.

37 Tow truck driver, information in records of California Highway Patrol,  
38 Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431  
39 and 2432.3, Vehicle Code.

40 Toxic substances, Department of, inspection of records of, Section 25152.5,  
41 Health and Safety Code.

42 Trade secrets, Section 1060, Evidence Code.

1 Trade secrets, confidentiality of, occupational safety and health inspections,  
2 Section 6322, Labor Code.

3 Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

4 Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and  
5 110370, Health and Safety Code.

6 Trade secrets, protection by Director of the Department of Pesticide Regulation,  
7 Section 6254.2.

8 Trade secrets and proprietary information relating to pesticides, confidentiality of,  
9 Sections 14022 and 14023, Food and Agricultural Code.

10 Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor  
11 Code.

12 Trade secrets relating to hazardous substances, disclosure of, ~~Sections 25358.2~~  
13 ~~and 25358.7~~, Section 68930 of, and Article 5 (commencing with Section 68480) of  
14 Chapter 2 of Part 2 of Division 45 of, the Health and Safety Code.

15 Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle  
16 Code.

17 Traffic offense, dismissed for participation in driving school or program, record  
18 of, confidentiality of, Section 1808.7, Vehicle Code.

19 Transit districts, questionnaire and financial statement information in bids,  
20 Section 99154, Public Utilities Code.

21 Tribal-state gaming contracts, exemption from disclosure for records of an Indian  
22 tribe relating to securitization of annual payments, Section 63048.63.

23 Trust companies, disclosure of private trust confidential information, Section  
24 1582, Financial Code.

25 **Comment.** Section 6276.44 is amended to update cross-references in accordance with the  
26 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
27 the Health and Safety Code.

28 **§ 53313 (amended). Services financed by community facilities district**

29 SEC. \_\_\_. Section 53313 of the Government Code is amended to read:

30 53313. A community facilities district may be established under this chapter to  
31 finance any one or more of the following types of services within an area:

32 (a) Police protection services, including, but not limited to, criminal justice  
33 services. However, criminal justice services shall be limited to providing services  
34 for jails, detention facilities, and juvenile halls.

35 (b) Fire protection and suppression services, and ambulance and paramedic  
36 services.

37 (c) Recreation program services, library services, maintenance services for  
38 elementary and secondary schoolsites and structures, and the operation and  
39 maintenance of museums and cultural facilities. A special tax may be levied for any  
40 of the services specified in this subdivision only upon approval of the registered  
41 voters as specified in subdivision (b) of Section 53326. An election to enact a special  
42 tax for recreation program services, library services, and the operation and

1 maintenance of museums and cultural facilities may be conducted pursuant to  
2 subdivision (c) of Section 53326.

3 (d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

4 (e) Flood and storm protection services, including, but not limited to, the operation  
5 and maintenance of storm drainage systems, plowing and removal of snow, and  
6 sandstorm protection systems.

7 (f) Services with respect to removal or remedial action for the cleanup of any  
8 hazardous substance released or threatened to be released into the environment. As  
9 used in this subdivision, the terms “remedial action” and “removal” shall have the  
10 meanings set forth in Sections ~~25322 and 25323~~, 68125 and 68135, respectively, of  
11 the Health and Safety Code, and the term “hazardous substance” shall have the  
12 meaning set forth in Section 25281 of the Health and Safety Code. Community  
13 facilities districts shall provide the State Department of Health Care Services and  
14 local health and building departments with notification of any cleanup activity  
15 pursuant to this subdivision at least 30 days prior to commencement of the activity.

16 (g) Maintenance and operation of any real property or other tangible property with  
17 an estimated useful life of five or more years that is owned by the local agency or  
18 by another local agency pursuant to an agreement entered into under Section  
19 53316.2.

20 A community facilities district tax approved by vote of the landowners of the  
21 district may only finance the services authorized in this section to the extent that  
22 they are in addition to those provided in the territory of the district before the district  
23 was created. The additional services shall not supplant services already available  
24 within that territory when the district was created.

25 Bonds shall not be issued pursuant to this chapter to fund any of the services  
26 specified in this section, although bonds may be issued to fund capital facilities to  
27 be used in providing these services.

28 **Comment.** Section 53313 is amended to update cross-references in accordance with the  
29 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
30 the Health and Safety Code.

31 **Note.** Section 53313(f) requires a community facilities district undertaking cleanup of hazardous  
32 substances to notify the State Department of Health Care Services (“DHCS”). It appears that this  
33 type of notice should either additionally or instead be provided to the Department of Toxic  
34 Substances Control (“DTSC”).

35 The programs and services of the DTSC and DHCS were both formerly part of the State  
36 Department of Health Services. See 1991 Governor’s Reorganization Plan No. 1 of 1991, § 146  
37 (proposed Health and Safety Code § 58804); Health & Safety Code § 100100. Section 53313  
38 formerly referred to the State Department of Health Services. See former Section 53313, as  
39 amended by 2013 Cal. Stat. ch. 219, § 2.

40 DHCS’s work does not appear to relate to hazardous substances. The mission of the DHCS is  
41 “to provide Californians with access to affordable, integrated, high-quality health care, including  
42 medical, dental, mental health, substance use treatment services and long-term care.” See  
43 <https://www.dhcs.ca.gov/Pages/AboutUs.aspx>. None of DHCS’s programs and services appear to  
44 relate to hazardous substance contamination or pollution more generally. See  
45 <https://www.dhcs.ca.gov/services/Pages/AllServices.aspx>.

1 On the other hand, DTSC succeeded to “the duties, powers, purposes, responsibilities, and  
2 jurisdiction of the Toxic Substances Control Program of the State Department of Health Services.”  
3 See 1991 Governor’s Reorganization Plan No. 1 of 1991, § 146 (proposed Health and Safety Code  
4 § 58804). DTSC’s charge expressly includes the powers and duties in Chapter 6.8 of Division 20,  
5 which relate to cleanup of hazardous substance releases. See *id.*

6 **The Commission welcomes comment on this issue.**

7 **§ 53313.5, as amended by Section 4 of Chapter 837 of the Statutes of 2018 (amended).**

8 **Purchase of property by community facilities district (effective until January 1, 2029)**

9 SEC. \_\_\_. Section 53313.5 of the Government Code, as amended by Section 4 of  
10 Chapter 837 of the Statutes of 2018, is amended to read:

11 53313.5. A community facilities district may also finance the purchase,  
12 construction, expansion, improvement, or rehabilitation of any real or other tangible  
13 property with an estimated useful life of five years or longer or may finance planning  
14 and design work that is directly related to the purchase, construction, expansion, or  
15 rehabilitation of any real or tangible property. The facilities need not be physically  
16 located within the district. A district may not lease out facilities that it has financed  
17 except pursuant to a lease agreement or annexation agreement entered into prior to  
18 January 1, 1988. A district may only finance the purchase of facilities whose  
19 construction has been completed, as determined by the legislative body, before the  
20 resolution of formation to establish the district is adopted pursuant to Section  
21 53325.1, except that a district may finance the purchase of facilities completed after  
22 the adoption of the resolution of formation if the facility was constructed as if it had  
23 been constructed under the direction and supervision, or under the authority of, the  
24 local agency that will own or operate the facility. For example, a community  
25 facilities district may finance facilities, including, but not limited to, the following:

26 (a) Local park, recreation, parkway, and open-space facilities.

27 (b) Elementary and secondary schoolsites and structures provided that the  
28 facilities meet the building area and cost standards established by the State  
29 Allocation Board.

30 (c) Libraries.

31 (d) Child care facilities, including costs of insuring the facilities against loss,  
32 liability insurance in connection with the operation of the facility, and other  
33 insurance costs relating to the operation of the facilities, but excluding all other  
34 operational costs. However, the proceeds of bonds issued pursuant to this chapter  
35 shall not be used to pay these insurance costs.

36 (e) The district may also finance the construction or undergrounding of water  
37 transmission and distribution facilities, natural gas pipeline facilities, telephone  
38 lines, facilities for the transmission or distribution of electrical energy, and cable  
39 television lines to provide access to those services to customers who do not have  
40 access to those services or to mitigate existing visual blight. The district may enter  
41 into an agreement with a public utility to utilize those facilities to provide a  
42 particular service and for the conveyance of those facilities to the public utility.  
43 “Public utility” shall include all utilities, whether public and regulated by the Public

1 Utilities Commission, or municipal. If the facilities are conveyed to the public  
2 utility, the agreement shall provide that the cost or a portion of the cost of the  
3 facilities that are the responsibility of the utility shall be refunded by the public  
4 utility to the district or improvement area thereof, to the extent that refunds are  
5 applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities  
6 Commission, as to utilities regulated by the commission, or (2) other laws regulating  
7 public utilities. Any reimbursement made to the district shall be utilized to reduce  
8 or minimize the special tax levied within the district or improvement area, or to  
9 construct or acquire additional facilities within the district or improvement area, as  
10 specified in the resolution of formation.

11 (f) The district may also finance the acquisition, improvement, rehabilitation, or  
12 maintenance of any real or other tangible property, whether privately or publicly  
13 owned, for flood and storm protection services, including, but not limited to, storm  
14 drainage and treatment systems and sandstorm protection systems.

15 (g) The district may also pay in full all amounts necessary to eliminate any fixed  
16 special assessment liens or to pay, repay, or defease any obligation to pay or any  
17 indebtedness secured by any tax, fee, charge, or assessment levied within the area  
18 of a community facilities district or may pay debt service on that indebtedness.  
19 When the amount financed by the district is to pay a tax, fee, charge, or assessment  
20 imposed by a public agency other than the one conducting the proceedings, and if  
21 the amount provided to the other public agency will not be entirely used to pay off  
22 or prepay an assessment lien or special tax obligation pursuant to the property  
23 owner's legal right to do so, the written consent of the other public agency is  
24 required. In addition, tax revenues of a district may be used to make lease or debt  
25 service payments on any lease, lease-purchase contract, or certificate of  
26 participation used to finance facilities authorized to be financed by the district.

27 (h) Any other governmental facilities that the legislative body creating the  
28 community facilities district is authorized by law to contribute revenue to, or  
29 construct, own, or operate. However, the district shall not operate or maintain or,  
30 except as otherwise provided in subdivisions (e) and (k), have any ownership  
31 interest in any facilities for the transmission or distribution of natural gas, telephone  
32 service, or electrical energy.

33 (i)(1) A district may also pay for the following:

34 (A) Work deemed necessary to bring buildings or real property, including  
35 privately owned buildings or real property, into compliance with seismic safety  
36 standards or regulations. Only work certified as necessary to comply with seismic  
37 safety standards or regulations by local building officials may be financed. No  
38 project involving the dismantling of an existing building and its replacement by a  
39 new building, nor the construction of a new or substantially new building may be  
40 financed pursuant to this subparagraph. Work on qualified historical buildings or  
41 structures shall be done in accordance with the State Historical Building Code (Part  
42 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety  
43 Code).

1 (B) In addition, within any county or area designated by the President of the  
2 United States or by the Governor as a disaster area or for which the Governor has  
3 proclaimed the existence of a state of emergency because of earthquake damage, a  
4 district may also pay for any work deemed necessary to repair any damage to real  
5 property directly or indirectly caused by the occurrence of an earthquake cited in  
6 the President's or the Governor's designation or proclamation, or by aftershocks  
7 associated with that earthquake, including work to reconstruct, repair, shore up, or  
8 replace any building damaged or destroyed by the earthquake, and specifically  
9 including, but not limited to, work on any building damaged or destroyed in the  
10 Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks.  
11 Work may be financed pursuant to this subparagraph only on property or buildings  
12 identified in a resolution of intention to establish a community facilities district  
13 adopted within seven years of the date on which the county or area is designated as  
14 a disaster area by the President or by the Governor or on which the Governor  
15 proclaims for the area the existence of a state of emergency.

16 (2) Work on privately owned property, including reconstruction or replacement  
17 of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may  
18 only be financed by a tax levy if all of the votes cast on the question of levying the  
19 tax, vote in favor of levying the tax, or with the prior written consent to the tax of  
20 the owners of all property that may be subject to the tax, in that case the prior written  
21 consent shall be deemed to constitute a vote in favor of the tax and any associated  
22 bond issue. Any district created to finance seismic safety work on privately owned  
23 buildings, including repair, reconstruction, or replacement of privately owned  
24 buildings pursuant to this subdivision, shall consist only of lots or parcels that the  
25 legislative body finds have buildings that were damaged or destroyed by the  
26 earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks  
27 of that earthquake.

28 (j) A district may also pay for the following:

29 (1) Work deemed necessary to repair and abate damage caused to privately owned  
30 buildings and structures by soil deterioration. "Soil deterioration" means a chemical  
31 reaction by soils that causes structural damage or defects in construction materials  
32 including concrete, steel, and ductile or cast iron. Only work certified as necessary  
33 by local building officials may be financed. No project involving the dismantling of  
34 an existing building or structure and its replacement by a new building or structure,  
35 nor the construction of a new or substantially new building or structure may be  
36 financed pursuant to this paragraph.

37 (2) Work on privately owned buildings and structures pursuant to this subdivision,  
38 including reconstruction, repair, and abatement of damage caused by soil  
39 deterioration, may only be financed by a tax levy if all of the votes cast on the  
40 question of levying the tax vote in favor of levying the tax. Any district created to  
41 finance the work on privately owned buildings or structures, including  
42 reconstruction, repair, and abatement of damage caused by soil deterioration, shall  
43 consist only of lots or parcels on which the legislative body finds that the buildings

1 or structures to be worked on pursuant to this subdivision suffer from soil  
2 deterioration.

3 (k) A district may also finance the acquisition, improvement, rehabilitation, or  
4 maintenance of any real or other tangible property, whether privately or publicly  
5 owned, for the purposes of removal or remedial action for the cleanup of any  
6 hazardous substance released or threatened to be released into the environment. As  
7 used in this subdivision, “remedial action” and “removal” shall have the meaning  
8 set forth in Sections ~~25322 and 25323~~, 68125 and 68135, respectively, of the Health  
9 and Safety Code, and “hazardous substance” shall have the meaning set forth in  
10 Section 25281 of the Health and Safety Code.

11 (l) A district may also finance and refinance the acquisition, installation, and  
12 improvement of energy efficiency, water conservation, wildfire safety  
13 improvements as defined in Section 5899.4 of the Streets and Highways Code, and  
14 renewable energy improvements that are affixed, as specified in Section 660 of the  
15 Civil Code, to or on real property and in buildings, whether the real property or  
16 buildings are privately or publicly owned. Energy efficiency, water conservation,  
17 wildfire safety improvements as defined in Section 5899.4 of the Streets and  
18 Highways Code, and renewable energy improvements financed by a district may  
19 only be installed on a privately owned building and on privately owned real property  
20 with the prior written consent of the owner or owners of the building or real  
21 property. This chapter shall not be used to finance installation of energy efficiency,  
22 water conservation, wildfire safety improvements as defined in Section 5899.4 of  
23 the Streets and Highways Code, and renewable energy improvements on a privately  
24 owned building or on privately owned real property in connection with the initial  
25 construction of a residential building unless the initial construction is undertaken by  
26 the intended owner or occupant.

27 (m) Any improvement on private property authorized to be financed by this  
28 section shall constitute a “public facility” for purposes of this chapter and a “public  
29 improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2  
30 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code,  
31 whether the improvement is owned by a private entity, if the legislative body has  
32 determined that the improvement provides a public benefit, or the improvement is  
33 owned by a public agency.

34 (n) This section shall remain in effect only until January 1, 2029, and as of that  
35 date is repealed.

36 **Comment.** Section 53313.5(k) is amended to update cross-references in accordance with the  
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
38 the Health and Safety Code.

1 § 53313.5, as repealed and added by Section 5 of Chapter 837 of the Statutes of 2018  
2 (amended). Purchase of property by community facilities district (operative on January  
3 1, 2029)

4 SEC. \_\_. Section 53313.5 of the Government Code, as repealed and added by  
5 Section 5 of Chapter 837 of the Statutes of 2018, is amended to read:

6 53313.5. A community facilities district may also finance the purchase,  
7 construction, expansion, improvement, or rehabilitation of any real or other tangible  
8 property with an estimated useful life of five years or longer or may finance planning  
9 and design work that is directly related to the purchase, construction, expansion, or  
10 rehabilitation of any real or tangible property. The facilities need not be physically  
11 located within the district. A district may not lease out facilities that it has financed  
12 except pursuant to a lease agreement or annexation agreement entered into prior to  
13 January 1, 1988. A district may only finance the purchase of facilities whose  
14 construction has been completed, as determined by the legislative body, before the  
15 resolution of formation to establish the district is adopted pursuant to Section  
16 53325.1, except that a district may finance the purchase of facilities completed after  
17 the adoption of the resolution of formation if the facility was constructed as if it had  
18 been constructed under the direction and supervision, or under the authority of, the  
19 local agency that will own or operate the facility. For example, a community  
20 facilities district may finance facilities, including, but not limited to, the following:

21 (a) Local park, recreation, parkway, and open-space facilities.

22 (b) Elementary and secondary schoolsites and structures provided that the  
23 facilities meet the building area and cost standards established by the State  
24 Allocation Board.

25 (c) Libraries.

26 (d) Child care facilities, including costs of insuring the facilities against loss,  
27 liability insurance in connection with the operation of the facility, and other  
28 insurance costs relating to the operation of the facilities, but excluding all other  
29 operational costs. However, the proceeds of bonds issued pursuant to this chapter  
30 shall not be used to pay these insurance costs.

31 (e) The district may also finance the construction or undergrounding of water  
32 transmission and distribution facilities, natural gas pipeline facilities, telephone  
33 lines, facilities for the transmission or distribution of electrical energy, and cable  
34 television lines to provide access to those services to customers who do not have  
35 access to those services or to mitigate existing visual blight. The district may enter  
36 into an agreement with a public utility to utilize those facilities to provide a  
37 particular service and for the conveyance of those facilities to the public utility.  
38 “Public utility” shall include all utilities, whether public and regulated by the Public  
39 Utilities Commission, or municipal. If the facilities are conveyed to the public  
40 utility, the agreement shall provide that the cost or a portion of the cost of the  
41 facilities that are the responsibility of the utility shall be refunded by the public  
42 utility to the district or improvement area thereof, to the extent that refunds are  
43 applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities

1 Commission, as to utilities regulated by the commission, or (2) other laws regulating  
2 public utilities. Any reimbursement made to the district shall be utilized to reduce  
3 or minimize the special tax levied within the district or improvement area, or to  
4 construct or acquire additional facilities within the district or improvement area, as  
5 specified in the resolution of formation.

6 (f) The district may also finance the acquisition, improvement, rehabilitation, or  
7 maintenance of any real or other tangible property, whether privately or publicly  
8 owned, for flood and storm protection services, including, but not limited to, storm  
9 drainage and treatment systems and sandstorm protection systems.

10 (g) The district may also pay in full all amounts necessary to eliminate any fixed  
11 special assessment liens or to pay, repay, or defease any obligation to pay or any  
12 indebtedness secured by any tax, fee, charge, or assessment levied within the area  
13 of a community facilities district or may pay debt service on that indebtedness.  
14 When the amount financed by the district is to pay a tax, fee, charge, or assessment  
15 imposed by a public agency other than the one conducting the proceedings, and if  
16 the amount provided to the other public agency will not be entirely used to pay off  
17 or prepay an assessment lien or special tax obligation pursuant to the property  
18 owner's legal right to do so, the written consent of the other public agency is  
19 required. In addition, tax revenues of a district may be used to make lease or debt  
20 service payments on any lease, lease-purchase contract, or certificate of  
21 participation used to finance facilities authorized to be financed by the district.

22 (h) Any other governmental facilities that the legislative body creating the  
23 community facilities district is authorized by law to contribute revenue to, or  
24 construct, own, or operate. However, the district shall not operate or maintain or,  
25 except as otherwise provided in subdivisions (e) and (k), have any ownership  
26 interest in any facilities for the transmission or distribution of natural gas, telephone  
27 service, or electrical energy.

28 (i)(1) A district may also pay for the following:

29 (A) Work deemed necessary to bring buildings or real property, including  
30 privately owned buildings or real property, into compliance with seismic safety  
31 standards or regulations. Only work certified as necessary to comply with seismic  
32 safety standards or regulations by local building officials may be financed. No  
33 project involving the dismantling of an existing building and its replacement by a  
34 new building, nor the construction of a new or substantially new building may be  
35 financed pursuant to this subparagraph. Work on qualified historical buildings or  
36 structures shall be done in accordance with the State Historical Building Code (Part  
37 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety  
38 Code).

39 (B) In addition, within any county or area designated by the President of the  
40 United States or by the Governor as a disaster area or for which the Governor has  
41 proclaimed the existence of a state of emergency because of earthquake damage, a  
42 district may also pay for any work deemed necessary to repair any damage to real  
43 property directly or indirectly caused by the occurrence of an earthquake cited in

1 the President’s or the Governor’s designation or proclamation, or by aftershocks  
2 associated with that earthquake, including work to reconstruct, repair, shore up, or  
3 replace any building damaged or destroyed by the earthquake, and specifically  
4 including, but not limited to, work on any building damaged or destroyed in the  
5 Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks.  
6 Work may be financed pursuant to this subparagraph only on property or buildings  
7 identified in a resolution of intention to establish a community facilities district  
8 adopted within seven years of the date on which the county or area is designated as  
9 a disaster area by the President or by the Governor or on which the Governor  
10 proclaims for the area the existence of a state of emergency.

11 (2) Work on privately owned property, including reconstruction or replacement  
12 of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may  
13 only be financed by a tax levy if all of the votes cast on the question of levying the  
14 tax, vote in favor of levying the tax, or with the prior written consent to the tax of  
15 the owners of all property that may be subject to the tax, in that case the prior written  
16 consent shall be deemed to constitute a vote in favor of the tax and any associated  
17 bond issue. Any district created to finance seismic safety work on privately owned  
18 buildings, including repair, reconstruction, or replacement of privately owned  
19 buildings pursuant to this subdivision, shall consist only of lots or parcels that the  
20 legislative body finds have buildings that were damaged or destroyed by the  
21 earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks  
22 of that earthquake.

23 (j) A district may also pay for the following:

24 (1) Work deemed necessary to repair and abate damage caused to privately owned  
25 buildings and structures by soil deterioration. “Soil deterioration” means a chemical  
26 reaction by soils that causes structural damage or defects in construction materials  
27 including concrete, steel, and ductile or cast iron. Only work certified as necessary  
28 by local building officials may be financed. No project involving the dismantling of  
29 an existing building or structure and its replacement by a new building or structure,  
30 nor the construction of a new or substantially new building or structure may be  
31 financed pursuant to this paragraph.

32 (2) Work on privately owned buildings and structures pursuant to this subdivision,  
33 including reconstruction, repair, and abatement of damage caused by soil  
34 deterioration, may only be financed by a tax levy if all of the votes cast on the  
35 question of levying the tax vote in favor of levying the tax. Any district created to  
36 finance the work on privately owned buildings or structures, including  
37 reconstruction, repair, and abatement of damage caused by soil deterioration, shall  
38 consist only of lots or parcels on which the legislative body finds that the buildings  
39 or structures to be worked on pursuant to this subdivision suffer from soil  
40 deterioration.

41 (k) A district may also finance the acquisition, improvement, rehabilitation, or  
42 maintenance of any real or other tangible property, whether privately or publicly  
43 owned, for the purposes of removal or remedial action for the cleanup of any

1 hazardous substance released or threatened to be released into the environment. As  
2 used in this subdivision, “remedial action” and “removal” shall have the meaning  
3 set forth in Sections ~~25322 and 25323~~, 68125 and 68135, respectively, of the Health  
4 and Safety Code, and “hazardous substance” shall have the meaning set forth in  
5 Section 25281 of the Health and Safety Code.

6 (l) A district may also finance and refinance the acquisition, installation, and  
7 improvement of energy efficiency, water conservation, and renewable energy  
8 improvements that are affixed, as specified in Section 660 of the Civil Code, to or  
9 on real property and in buildings, whether the real property or buildings are privately  
10 or publicly owned. Energy efficiency, water conservation, and renewable energy  
11 improvements financed by a district may only be installed on a privately owned  
12 building and on privately owned real property with the prior written consent of the  
13 owner or owners of the building or real property. This chapter shall not be used to  
14 finance installation of energy efficiency, water conservation, and renewable energy  
15 improvements on a privately owned building or on privately owned real property in  
16 connection with the initial construction of a residential building unless the initial  
17 construction is undertaken by the intended owner or occupant.

18 (m) Any improvement on private property authorized to be financed by this  
19 section shall constitute a “public facility” for purposes of this chapter and a “public  
20 improvement” for purposes of Part 1 (commencing with Section 3100) and Part 2  
21 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code,  
22 whether the improvement is owned by a private entity, if the legislative body has  
23 determined that the improvement provides a public benefit, or the improvement is  
24 owned by a public agency.

25 (n) This section shall become operative on January 1, 2029.

26 **Comment.** Section 53313.5(k) is amended to update cross-references in accordance with the  
27 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
28 the Health and Safety Code.

29 **§ 53314.7 (amended). Cost recovery and expenditures for hazardous substance cleanup by**  
30 **community facilities district**

31 SEC. \_\_. Section 53314.7 of the Government Code is amended to read:

32 53314.7. (a) Any responsible party as defined by subdivision (a) of Section  
33 ~~25323.5~~ 68145 of the Health and Safety Code shall be liable to the district for the  
34 costs incurred in the removal or remedial action for the cleanup of any hazardous  
35 substance released or threatened to be released into the environment. The amount  
36 of the costs shall include interest on the costs accrued from the date of expenditure.  
37 The interest shall be calculated based on the average annual rate of return on the  
38 district’s investment of surplus funds for the fiscal year in which the district incurred  
39 the costs. Recovery of costs by a community facilities district under this section  
40 shall be commenced before or immediately upon completion of the removal or  
41 remedial action, and payments received hereunder by the district shall be deposited  
42 in the revolving fund in accordance with Section 53314.6.

1 (b) To expedite cleanup, this section is intended to provide local jurisdictions an  
2 alternative method of financing the cost of removal or remedial action for the  
3 cleanup of any hazardous substance through the issuance of voter-approved limited  
4 obligation bonds. The provisions of this section shall not affect or limit the  
5 provisions of any other law establishing the liability of any person for, or otherwise  
6 regulating, the generation, transportation, storage, treatment, or disposal of  
7 hazardous substances. The scope and standard of liability for any costs recoverable  
8 pursuant to Section 53314.7 shall be the scope and standard of liability set forth in  
9 the Comprehensive Environmental Response, Compensation, and Liability Act of  
10 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any other provision of state or  
11 federal law establishing responsibility for cleanup of hazardous waste sites.

12 **Comment.** Section 53314.7 is amended to update cross-references in accordance with the  
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
14 the Health and Safety Code.

15 **§ 53321.5 (amended). Required reports**

16 SEC. \_\_. Section 53321.5 of the Government Code is amended to read:

17 53321.5. At the time of the adoption of the resolution of intention to establish a  
18 community facilities district, the legislative body shall direct each of its officers who  
19 is or will be responsible for providing one or more of the proposed types of public  
20 facilities or services to be financed by the district, if it is established, to study the  
21 proposed district and, at or before the time of the hearing, file a report with the  
22 legislative body containing a brief description of the public facilities and services  
23 by type that will in ~~his or her~~ the officer's opinion be required to adequately meet  
24 the needs of the district and ~~his or her~~ the officer's estimate of the cost of providing  
25 those public facilities and services. If the purchase of completed public facilities or  
26 the payment of incidental expenses is proposed, the legislative body shall direct its  
27 appropriate officer to estimate the fair and reasonable cost of those facilities or  
28 incidental expenses. If removal or remedial action for the cleanup of any hazardous  
29 substance is proposed, the legislative body shall (a) direct its responsible officer to  
30 prepare or cause to be prepared, a remedial action plan based upon factors  
31 comparable to those described in ~~subdivision (d) of Section 25356.1~~ Section 69205  
32 of the Health and Safety Code or (b) determine, on the basis of the particular facts  
33 and circumstances, that shall be comparable to those described in ~~subdivision (h) of~~  
34 ~~Section 25356.1~~ Section 69225 of the Health and Safety Code, that the remedial  
35 action plan is not required or (c) condition financing of the removal or remedial  
36 action upon approval of a remedial action plan pursuant to ~~Section 25356.1~~ Article  
37 12 (commencing with Section 69190) of Chapter 5 of Part 2 of Division 45 of the  
38 Health and Safety Code. All of those reports shall be made a part of the record of  
39 the hearing on the resolution of intention to establish the district.

40 **Comment.** Section 53321.5 is amended to update cross-references in accordance with the  
41 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
42 the Health and Safety Code.

43 This section is also amended to eliminate gendered pronouns.

1 **Note.** Section 53321.5 refers to facts and circumstances described in Health and Safety Code  
2 Section 25356.1(h) serving as the basis for a determination that a remedial action plan is not  
3 required. Health and Safety Code Section 25356.1(h) has been proposed for recodification as  
4 multiple provisions (proposed Sections 69225, 69230, and 69235). Only proposed Section 69225  
5 appears to be relevant to this cross-reference, as it specifies situations in which preparation of a  
6 plan is not required. For this reason, the cross-reference to Section 25356.1(h) has been updated to  
7 refer to Section 69225.

8 Proposed Section 69235 provides a rule for computing costs of a response action and does not  
9 appear to be relevant. Proposed Section 69230 describes circumstances in which the department  
10 can waive a requirement that a remedial action plan meet otherwise applicable requirements. This  
11 section does not appear to excuse preparation of the plan. For this reason, it does not appear to be  
12 relevant to the cross-reference.

13 **Absent comment, this proposed cross-reference update will be presumed correct.**

14 **§ 65913.4 (amended). Streamlined approval process for multifamily housing development**

15 SEC. \_\_. Section 65913.4 of the Government Code is amended to read:

16 65913.4. (a) A development proponent may submit an application for a  
17 development that is subject to the streamlined, ministerial approval process  
18 provided by subdivision (b) and is not subject to a conditional use permit if the  
19 development satisfies all of the following objective planning standards:

20 (1) The development is a multifamily housing development that contains two or  
21 more residential units.

22 (2) The development is located on a site that satisfies all of the following:

23 (A) A site that is a legal parcel or parcels located in a city if, and only if, the city  
24 boundaries include some portion of either an urbanized area or urban cluster, as  
25 designated by the United States Census Bureau, or, for unincorporated areas, a legal  
26 parcel or parcels wholly within the boundaries of an urbanized area or urban cluster,  
27 as designated by the United States Census Bureau.

28 (B) A site in which at least 75 percent of the perimeter of the site adjoins parcels  
29 that are developed with urban uses. For the purposes of this section, parcels that are  
30 only separated by a street or highway shall be considered to be adjoined.

31 (C) A site that is zoned for residential use or residential mixed-use development,  
32 or has a general plan designation that allows residential use or a mix of residential  
33 and nonresidential uses, with at least two-thirds of the square footage of the  
34 development designated for residential use. Additional density, floor area, and units,  
35 and any other concession, incentive, or waiver of development standards granted  
36 pursuant to the Density Bonus Law in Section 65915 shall be included in the square  
37 footage calculation. The square footage of the development shall not include  
38 underground space, such as basements or underground parking garages.

39 (3)(A) The development proponent has committed to record, prior to the issuance  
40 of the first building permit, a land use restriction or covenant providing that any  
41 lower or moderate income housing units required pursuant to subparagraph (B) of  
42 paragraph (4) shall remain available at affordable housing costs or rent to persons  
43 and families of lower or moderate income for no less than the following periods of  
44 time:

1 (i) Fifty-five years for units that are rented.

2 (ii) Forty-five years for units that are owned.

3 (B) The city or county shall require the recording of covenants or restrictions  
4 implementing this paragraph for each parcel or unit of real property included in the  
5 development.

6 (4) The development satisfies subparagraphs (A) and (B) below:

7 (A) Is located in a locality that the department has determined is subject to this  
8 subparagraph on the basis that the number of units that have been issued building  
9 permits, as shown on the most recent production report received by the department,  
10 is less than the locality's share of the regional housing needs, by income category,  
11 for that reporting period. A locality shall remain eligible under this subparagraph  
12 until the department's determination for the next reporting period.

13 (B) The development is subject to a requirement mandating a minimum  
14 percentage of below market rate housing based on one of the following:

15 (i) The locality did not submit its latest production report to the department by the  
16 time period required by Section 65400, or that production report reflects that there  
17 were fewer units of above moderate-income housing issued building permits than  
18 were required for the regional housing needs assessment cycle for that reporting  
19 period. In addition, if the project contains more than 10 units of housing, the project  
20 does either of the following:

21 (I) The project dedicates a minimum of 10 percent of the total number of units to  
22 housing affordable to households making at or below 80 percent of the area median  
23 income. However, if the locality has adopted a local ordinance that requires that  
24 greater than 10 percent of the units be dedicated to housing affordable to households  
25 making below 80 percent of the area median income, that local ordinance applies.

26 (II)(ia) If the project is located within the San Francisco Bay area, the project, in  
27 lieu of complying with subclause (I), dedicates 20 percent of the total number of  
28 units to housing affordable to households making below 120 percent of the area  
29 median income with the average income of the units at or below 100 percent of the  
30 area median income. However, a local ordinance adopted by the locality applies if  
31 it requires greater than 20 percent of the units be dedicated to housing affordable to  
32 households making at or below 120 percent of the area median income, or requires  
33 that any of the units be dedicated at a level deeper than 120 percent. In order to  
34 comply with this subclause, the rent or sale price charged for units that are dedicated  
35 to housing affordable to households between 80 percent and 120 percent of the area  
36 median income shall not exceed 30 percent of the gross income of the household.

37 (ib) For purposes of this subclause, "San Francisco Bay area" means the entire  
38 area within the territorial boundaries of the Counties of Alameda, Contra Costa,  
39 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County  
40 of San Francisco.

41 (ii) The locality's latest production report reflects that there were fewer units of  
42 housing issued building permits affordable to either very low income or low-income  
43 households by income category than were required for the regional housing needs

1 assessment cycle for that reporting period, and the project seeking approval  
2 dedicates 50 percent of the total number of units to housing affordable to households  
3 making at or below 80 percent of the area median income. However, if the locality  
4 has adopted a local ordinance that requires that greater than 50 percent of the units  
5 be dedicated to housing affordable to households making at or below 80 percent of  
6 the area median income, that local ordinance applies.

7 (iii) The locality did not submit its latest production report to the department by  
8 the time period required by Section 65400, or if the production report reflects that  
9 there were fewer units of housing affordable to both income levels described in  
10 clauses (i) and (ii) that were issued building permits than were required for the  
11 regional housing needs assessment cycle for that reporting period, the project  
12 seeking approval may choose between utilizing clause (i) or (ii).

13 (C)(i) A development proponent that uses a unit of affordable housing to satisfy  
14 the requirements of subparagraph (B) may also satisfy any other local or state  
15 requirement for affordable housing, including local ordinances or the Density Bonus  
16 Law in Section 65915, provided that the development proponent complies with the  
17 applicable requirements in the state or local law.

18 (ii) A development proponent that uses a unit of affordable housing to satisfy any  
19 other state or local affordability requirement may also satisfy the requirements of  
20 subparagraph (B), provided that the development proponent complies with  
21 applicable requirements of subparagraph (B).

22 (iii) A development proponent may satisfy the affordability requirements of  
23 subparagraph (B) with a unit that is restricted to households with incomes lower  
24 than the applicable income limits required in subparagraph (B).

25 (5) The development, excluding any additional density or any other concessions,  
26 incentives, or waivers of development standards granted pursuant to the Density  
27 Bonus Law in Section 65915, is consistent with objective zoning standards,  
28 objective subdivision standards, and objective design review standards in effect at  
29 the time that the development is submitted to the local government pursuant to this  
30 section. For purposes of this paragraph, “objective zoning standards,” “objective  
31 subdivision standards,” and “objective design review standards” mean standards  
32 that involve no personal or subjective judgment by a public official and are  
33 uniformly verifiable by reference to an external and uniform benchmark or criterion  
34 available and knowable by both the development applicant or proponent and the  
35 public official before submittal. These standards may be embodied in alternative  
36 objective land use specifications adopted by a city or county, and may include, but  
37 are not limited to, housing overlay zones, specific plans, inclusionary zoning  
38 ordinances, and density bonus ordinances, subject to the following:

39 (A) A development shall be deemed consistent with the objective zoning  
40 standards related to housing density, as applicable, if the density proposed is  
41 compliant with the maximum density allowed within that land use designation,  
42 notwithstanding any specified maximum unit allocation that may result in fewer  
43 units of housing being permitted.

1 (B) In the event that objective zoning, general plan, subdivision, or design review  
2 standards are mutually inconsistent, a development shall be deemed consistent with  
3 the objective zoning and subdivision standards pursuant to this subdivision if the  
4 development is consistent with the standards set forth in the general plan.

5 (C) The amendments to this subdivision made by the act adding this subparagraph  
6 do not constitute a change in, but are declaratory of, existing law.

7 (6) The development is not located on a site that is any of the following:

8 (A) A coastal zone, as defined in Division 20 (commencing with Section 30000)  
9 of the Public Resources Code.

10 (B) Either prime farmland or farmland of statewide importance, as defined  
11 pursuant to United States Department of Agriculture land inventory and monitoring  
12 criteria, as modified for California, and designated on the maps prepared by the  
13 Farmland Mapping and Monitoring Program of the Department of Conservation, or  
14 land zoned or designated for agricultural protection or preservation by a local ballot  
15 measure that was approved by the voters of that jurisdiction.

16 (C) Wetlands, as defined in the United States Fish and Wildlife Service Manual,  
17 Part 660 FW 2 (June 21, 1993).

18 (D) Within a very high fire hazard severity zone, as determined by the Department  
19 of Forestry and Fire Protection pursuant to Section 51178, or within a high or very  
20 high fire hazard severity zone as indicated on maps adopted by the Department of  
21 Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.  
22 This subparagraph does not apply to sites excluded from the specified hazard zones  
23 by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have  
24 adopted fire hazard mitigation measures pursuant to existing building standards or  
25 state fire mitigation measures applicable to the development.

26 (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a  
27 hazardous waste site designated by the Department of Toxic Substances Control  
28 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 68760) of Chapter  
29 4 of Part 2 of Division 45 of the Health and Safety Code, unless the State  
30 Department of Public Health, State Water Resources Control Board, or Department  
31 of Toxic Substances Control has cleared the site for residential use or residential  
32 mixed uses.

33 (F) Within a delineated earthquake fault zone as determined by the State Geologist  
34 in any official maps published by the State Geologist, unless the development  
35 complies with applicable seismic protection building code standards adopted by the  
36 California Building Standards Commission under the California Building Standards  
37 Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and  
38 Safety Code), and by any local building department under Chapter 12.2  
39 (commencing with Section 8875) of Division 1 of Title 2.

40 (G) Within a special flood hazard area subject to inundation by the 1 percent  
41 annual chance flood (100-year flood) as determined by the Federal Emergency  
42 Management Agency in any official maps published by the Federal Emergency  
43 Management Agency. If a development proponent is able to satisfy all applicable

1 federal qualifying criteria in order to provide that the site satisfies this subparagraph  
2 and is otherwise eligible for streamlined approval under this section, a local  
3 government shall not deny the application on the basis that the development  
4 proponent did not comply with any additional permit requirement, standard, or  
5 action adopted by that local government that is applicable to that site. A  
6 development may be located on a site described in this subparagraph if either of the  
7 following are met:

8 (i) The site has been subject to a Letter of Map Revision prepared by the Federal  
9 Emergency Management Agency and issued to the local jurisdiction.

10 (ii) The site meets Federal Emergency Management Agency requirements  
11 necessary to meet minimum flood plain management criteria of the National Flood  
12 Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60  
13 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the  
14 Code of Federal Regulations.

15 (H) Within a regulatory floodway as determined by the Federal Emergency  
16 Management Agency in any official maps published by the Federal Emergency  
17 Management Agency, unless the development has received a no-rise certification in  
18 accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.  
19 If a development proponent is able to satisfy all applicable federal qualifying criteria  
20 in order to provide that the site satisfies this subparagraph and is otherwise eligible  
21 for streamlined approval under this section, a local government shall not deny the  
22 application on the basis that the development proponent did not comply with any  
23 additional permit requirement, standard, or action adopted by that local government  
24 that is applicable to that site.

25 (I) Lands identified for conservation in an adopted natural community  
26 conservation plan pursuant to the Natural Community Conservation Planning Act  
27 (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game  
28 Code), habitat conservation plan pursuant to the federal Endangered Species Act of  
29 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection  
30 plan.

31 (J) Habitat for protected species identified as candidate, sensitive, or species of  
32 special status by state or federal agencies, fully protected species, or species  
33 protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et  
34 seq.), the California Endangered Species Act (Chapter 1.5 (commencing with  
35 Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant  
36 Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the  
37 Fish and Game Code).

38 (K) Lands under conservation easement.

39 (7) The development is not located on a site where any of the following apply:

40 (A) The development would require the demolition of the following types of  
41 housing:

1 (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts  
2 rents to levels affordable to persons and families of moderate, low, or very low  
3 income.

4 (ii) Housing that is subject to any form of rent or price control through a public  
5 entity's valid exercise of its police power.

6 (iii) Housing that has been occupied by tenants within the past 10 years.

7 (B) The site was previously used for housing that was occupied by tenants that  
8 was demolished within 10 years before the development proponent submits an  
9 application under this section.

10 (C) The development would require the demolition of a historic structure that was  
11 placed on a national, state, or local historic register.

12 (D) The property contains housing units that are occupied by tenants, and units at  
13 the property are, or were, subsequently offered for sale to the general public by the  
14 subdivider or subsequent owner of the property.

15 (8) The development proponent has done both of the following, as applicable:

16 (A) Certified to the locality that either of the following is true, as applicable:

17 (i) The entirety of the development is a public work for purposes of Chapter 1  
18 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

19 (ii) If the development is not in its entirety a public work, that all construction  
20 workers employed in the execution of the development will be paid at least the  
21 general prevailing rate of per diem wages for the type of work and geographic area,  
22 as determined by the Director of Industrial Relations pursuant to Sections 1773 and  
23 1773.9 of the Labor Code, except that apprentices registered in programs approved  
24 by the Chief of the Division of Apprenticeship Standards may be paid at least the  
25 applicable apprentice prevailing rate. If the development is subject to this  
26 subparagraph, then for those portions of the development that are not a public work  
27 all of the following shall apply:

28 (I) The development proponent shall ensure that the prevailing wage requirement  
29 is included in all contracts for the performance of the work.

30 (II) All contractors and subcontractors shall pay to all construction workers  
31 employed in the execution of the work at least the general prevailing rate of per  
32 diem wages, except that apprentices registered in programs approved by the Chief  
33 of the Division of Apprenticeship Standards may be paid at least the applicable  
34 apprentice prevailing rate.

35 (III) Except as provided in subclause (V), all contractors and subcontractors shall  
36 maintain and verify payroll records pursuant to Section 1776 of the Labor Code and  
37 make those records available for inspection and copying as provided therein.

38 (IV) Except as provided in subclause (V), the obligation of the contractors and  
39 subcontractors to pay prevailing wages may be enforced by the Labor  
40 Commissioner through the issuance of a civil wage and penalty assessment pursuant  
41 to Section 1741 of the Labor Code, which may be reviewed pursuant to Section  
42 1742 of the Labor Code, within 18 months after the completion of the development,  
43 by an underpaid worker through an administrative complaint or civil action, or by a

1 joint labor-management committee through a civil action under Section 1771.2 of  
2 the Labor Code. If a civil wage and penalty assessment is issued, the contractor,  
3 subcontractor, and surety on a bond or bonds issued to secure the payment of wages  
4 covered by the assessment shall be liable for liquidated damages pursuant to Section  
5 1742.1 of the Labor Code.

6 (V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors  
7 performing work on the development are subject to a project labor agreement that  
8 requires the payment of prevailing wages to all construction workers employed in  
9 the execution of the development and provides for enforcement of that obligation  
10 through an arbitration procedure. For purposes of this clause, “project labor  
11 agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of  
12 Section 2500 of the Public Contract Code.

13 (VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the  
14 requirement that employer payments not reduce the obligation to pay the hourly  
15 straight time or overtime wages found to be prevailing shall not apply if otherwise  
16 provided in a bona fide collective bargaining agreement covering the worker. The  
17 requirement to pay at least the general prevailing rate of per diem wages does not  
18 preclude use of an alternative workweek schedule adopted pursuant to Section 511  
19 or 514 of the Labor Code.

20 (B)(i) For developments for which any of the following conditions apply, certified  
21 that a skilled and trained workforce shall be used to complete the development if  
22 the application is approved:

23 (I) On and after January 1, 2018, until December 31, 2021, the development  
24 consists of 75 or more units with a residential component that is not 100 percent  
25 subsidized affordable housing and will be located within a jurisdiction located in a  
26 coastal or bay county with a population of 225,000 or more.

27 (II) On and after January 1, 2022, until December 31, 2025, the development  
28 consists of 50 or more units with a residential component that is not 100 percent  
29 subsidized affordable housing and will be located within a jurisdiction located in a  
30 coastal or bay county with a population of 225,000 or more.

31 (III) On and after January 1, 2018, until December 31, 2019, the development  
32 consists of 75 or more units with a residential component that is not 100 percent  
33 subsidized affordable housing and will be located within a jurisdiction with a  
34 population of fewer than 550,000 and that is not located in a coastal or bay county.

35 (IV) On and after January 1, 2020, until December 31, 2021, the development  
36 consists of more than 50 units with a residential component that is not 100 percent  
37 subsidized affordable housing and will be located within a jurisdiction with a  
38 population of fewer than 550,000 and that is not located in a coastal or bay county.

39 (V) On and after January 1, 2022, until December 31, 2025, the development  
40 consists of more than 25 units with a residential component that is not 100 percent  
41 subsidized affordable housing and will be located within a jurisdiction with a  
42 population of fewer than 550,000 and that is not located in a coastal or bay county.

1 (ii) For purposes of this section, “skilled and trained workforce” has the same  
2 meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of  
3 Division 2 of the Public Contract Code.

4 (iii) If the development proponent has certified that a skilled and trained  
5 workforce will be used to complete the development and the application is  
6 approved, the following shall apply:

7 (I) The applicant shall require in all contracts for the performance of work that  
8 every contractor and subcontractor at every tier will individually use a skilled and  
9 trained workforce to complete the development.

10 (II) Every contractor and subcontractor shall use a skilled and trained workforce  
11 to complete the development.

12 (III) Except as provided in subclause (IV), the applicant shall provide to the  
13 locality, on a monthly basis while the development or contract is being performed,  
14 a report demonstrating compliance with Chapter 2.9 (commencing with Section  
15 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report  
16 provided to the locality pursuant to this subclause shall be a public record under the  
17 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of  
18 Division 7 of Title 1) and shall be open to public inspection. An applicant that fails  
19 to provide a monthly report demonstrating compliance with Chapter 2.9  
20 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code  
21 shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for  
22 each month for which the report has not been provided. Any contractor or  
23 subcontractor that fails to use a skilled and trained workforce shall be subject to a  
24 civil penalty of two hundred dollars (\$200) per day for each worker employed in  
25 contravention of the skilled and trained workforce requirement. Penalties may be  
26 assessed by the Labor Commissioner within 18 months of completion of the  
27 development using the same procedures for issuance of civil wage and penalty  
28 assessments pursuant to Section 1741 of the Labor Code, and may be reviewed  
29 pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall  
30 be paid to the State Public Works Enforcement Fund.

31 (IV) Subclause (III) shall not apply if all contractors and subcontractors  
32 performing work on the development are subject to a project labor agreement that  
33 requires compliance with the skilled and trained workforce requirement and  
34 provides for enforcement of that obligation through an arbitration procedure. For  
35 purposes of this subparagraph, “project labor agreement” has the same meaning as  
36 set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract  
37 Code.

38 (C) Notwithstanding subparagraphs (A) and (B), a development that is subject to  
39 approval pursuant to this section is exempt from any requirement to pay prevailing  
40 wages or use a skilled and trained workforce if it meets both of the following:

41 (i) The project includes 10 or fewer units.

42 (ii) The project is not a public work for purposes of Chapter 1 (commencing with  
43 Section 1720) of Part 7 of Division 2 of the Labor Code.

1 (9) The development did not or does not involve a subdivision of a parcel that is,  
2 or, notwithstanding this section, would otherwise be, subject to the Subdivision Map  
3 Act (Division 2 (commencing with Section 66410)) or any other applicable law  
4 authorizing the subdivision of land, unless the development is consistent with all  
5 objective subdivision standards in the local subdivision ordinance, and either of the  
6 following apply:

7 (A) The development has received or will receive financing or funding by means  
8 of a low-income housing tax credit and is subject to the requirement that prevailing  
9 wages be paid pursuant to subparagraph (A) of paragraph (8).

10 (B) The development is subject to the requirement that prevailing wages be paid,  
11 and a skilled and trained workforce used, pursuant to paragraph (8).

12 (10) The development shall not be upon an existing parcel of land or site that is  
13 governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with  
14 Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational  
15 Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of  
16 Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part  
17 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety  
18 Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section  
19 18860) of Division 13 of the Health and Safety Code).

20 (b)(1) If a local government determines that a development submitted pursuant to  
21 this section is in conflict with any of the objective planning standards specified in  
22 subdivision (a), it shall provide the development proponent written documentation  
23 of which standard or standards the development conflicts with, and an explanation  
24 for the reason or reasons the development conflicts with that standard or standards,  
25 as follows:

26 (A) Within 60 days of submittal of the development to the local government  
27 pursuant to this section if the development contains 150 or fewer housing units.

28 (B) Within 90 days of submittal of the development to the local government  
29 pursuant to this section if the development contains more than 150 housing units.

30 (2) If the local government fails to provide the required documentation pursuant  
31 to paragraph (1), the development shall be deemed to satisfy the objective planning  
32 standards specified in subdivision (a).

33 (3) For purposes of this section, a development is consistent with the objective  
34 planning standards specified in subdivision (a) if there is substantial evidence that  
35 would allow a reasonable person to conclude that the development is consistent with  
36 the objective planning standards.

37 (c)(1) Any design review or public oversight of the development may be  
38 conducted by the local government's planning commission or any equivalent board  
39 or commission responsible for review and approval of development projects, or the  
40 city council or board of supervisors, as appropriate. That design review or public  
41 oversight shall be objective and be strictly focused on assessing compliance with  
42 criteria required for streamlined projects, as well as any reasonable objective design  
43 standards published and adopted by ordinance or resolution by a local jurisdiction

1 before submission of a development application, and shall be broadly applicable to  
2 development within the jurisdiction. That design review or public oversight shall be  
3 completed as follows and shall not in any way inhibit, chill, or preclude the  
4 ministerial approval provided by this section or its effect, as applicable:

5 (A) Within 90 days of submittal of the development to the local government  
6 pursuant to this section if the development contains 150 or fewer housing units.

7 (B) Within 180 days of submittal of the development to the local government  
8 pursuant to this section if the development contains more than 150 housing units.

9 (2) If the development is consistent with the requirements of subparagraph (A) or  
10 (B) of paragraph (9) of subdivision (a) and is consistent with all objective  
11 subdivision standards in the local subdivision ordinance, an application for a  
12 subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with  
13 Section 66410)) shall be exempt from the requirements of the California  
14 Environmental Quality Act (Division 13 (commencing with Section 21000) of the  
15 Public Resources Code) and shall be subject to the public oversight timelines set  
16 forth in paragraph (1).

17 (d)(1) Notwithstanding any other law, a local government, whether or not it has  
18 adopted an ordinance governing automobile parking requirements in multifamily  
19 developments, shall not impose automobile parking standards for a streamlined  
20 development that was approved pursuant to this section in any of the following  
21 instances:

22 (A) The development is located within one-half mile of public transit.

23 (B) The development is located within an architecturally and historically  
24 significant historic district.

25 (C) When on-street parking permits are required but not offered to the occupants  
26 of the development.

27 (D) When there is a car share vehicle located within one block of the development.

28 (2) If the development does not fall within any of the categories described in  
29 paragraph (1), the local government shall not impose automobile parking  
30 requirements for streamlined developments approved pursuant to this section that  
31 exceed one parking space per unit.

32 (e)(1) If a local government approves a development pursuant to this section, then,  
33 notwithstanding any other law, that approval shall not expire if the project includes  
34 public investment in housing affordability, beyond tax credits, where 50 percent of  
35 the units are affordable to households making at or below 80 percent of the area  
36 median income.

37 (2)(A) If a local government approves a development pursuant to this section and  
38 the project does not include 50 percent of the units affordable to households making  
39 at or below 80 percent of the area median income, that approval shall remain valid  
40 for three years from the date of the final action establishing that approval, or if  
41 litigation is filed challenging that approval, from the date of the final judgment  
42 upholding that approval. Approval shall remain valid for a project provided that

1 vertical construction of the development has begun and is in progress. For purposes  
2 of this subdivision, “in progress” means one of the following:

3 (i) The construction has begun and has not ceased for more than 180 days.

4 (ii) If the development requires multiple building permits, an initial phase has  
5 been completed, and the project proponent has applied for and is diligently pursuing  
6 a building permit for a subsequent phase, provided that once it has been issued, the  
7 building permit for the subsequent phase does not lapse.

8 (B) Notwithstanding subparagraph (A), a local government may grant a project a  
9 one-time, one-year extension if the project proponent can provide documentation  
10 that there has been significant progress toward getting the development construction  
11 ready, such as filing a building permit application.

12 (3) If a local government approves a development pursuant to this section, that  
13 approval shall remain valid for three years from the date of the final action  
14 establishing that approval and shall remain valid thereafter for a project so long as  
15 vertical construction of the development has begun and is in progress. Additionally,  
16 the development proponent may request, and the local government shall have  
17 discretion to grant, an additional one-year extension to the original three-year  
18 period. The local government’s action and discretion in determining whether to  
19 grant the foregoing extension shall be limited to considerations and processes set  
20 forth in this section.

21 (f)(1) A local government shall not adopt or impose any requirement, including,  
22 but not limited to, increased fees or inclusionary housing requirements, that applies  
23 to a project solely or partially on the basis that the project is eligible to receive  
24 ministerial or streamlined approval pursuant to this section.

25 (2) A local government shall issue a subsequent permit required for a development  
26 approved under this section if the application substantially complies with the  
27 development as it was approved pursuant to subdivision (b). Upon receipt of an  
28 application for a subsequent permit, the local government shall process the permit  
29 without unreasonable delay and shall not impose any procedure or requirement that  
30 is not imposed on projects that are not approved pursuant to this section. Issuance  
31 of subsequent permits shall implement the approved development, and review of  
32 the permit application shall not inhibit, chill, or preclude the development. For  
33 purposes of this paragraph, a “subsequent permit” means a permit required  
34 subsequent to receiving approval under subdivision (b), and includes, but is not  
35 limited to, demolition, grading, and building permits and final maps, if necessary.

36 (g)(1) This section shall not affect a development proponent’s ability to use any  
37 alternative streamlined by right permit processing adopted by a local government,  
38 including the provisions of subdivision (i) of Section 65583.2.

39 (2) This section shall not prevent a development from also qualifying as a housing  
40 development project entitled to the protections of Section 65589.5. This paragraph  
41 does not constitute a change in, but is declaratory of, existing law.

42 (h) The California Environmental Quality Act (Division 13 (commencing with  
43 Section 21000) of the Public Resources Code) does not apply to actions taken by a

1 state agency, local government, or the San Francisco Bay Area Rapid Transit  
2 District to:

3 (1) Lease, convey, or encumber land owned by the local government or the San  
4 Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or  
5 encumbrance of land owned by the local government, or for the lease of land owned  
6 by the San Francisco Bay Area Rapid Transit District in association with an eligible  
7 TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code,  
8 nor to any decisions associated with that lease, or to provide financial assistance to  
9 a development that receives streamlined approval pursuant to this section that is to  
10 be used for housing for persons and families of very low, low, or moderate income,  
11 as defined in Section 50093 of the Health and Safety Code.

12 (2) Approve improvements located on land owned by the local government or the  
13 San Francisco Bay Area Rapid Transit District that are necessary to implement a  
14 development that receives streamlined approval pursuant to this section that is to be  
15 used for housing for persons and families of very low, low, or moderate income, as  
16 defined in Section 50093 of the Health and Safety Code.

17 (i) For purposes of this section, the following terms have the following meanings:

18 (1) “Affordable housing cost” has the same meaning as set forth in Section  
19 50052.5 of the Health and Safety Code.

20 (2) “Affordable rent” has the same meaning as set forth in Section 50053 of the  
21 Health and Safety Code.

22 (3) “Department” means the Department of Housing and Community  
23 Development.

24 (4) “Development proponent” means the developer who submits an application  
25 for streamlined approval pursuant to this section.

26 (5) “Completed entitlements” means a housing development that has received all  
27 the required land use approvals or entitlements necessary for the issuance of a  
28 building permit.

29 (6) “Locality” or “local government” means a city, including a charter city, a  
30 county, including a charter county, or a city and county, including a charter city and  
31 county.

32 (7) “Moderate income housing units” means housing units with an affordable  
33 housing cost or affordable rent for persons and families of moderate income, as that  
34 term is defined in Section 50093 of the Health and Safety Code.

35 (8) “Production report” means the information reported pursuant to subparagraph  
36 (H) of paragraph (2) of subdivision (a) of Section 65400.

37 (9) “State agency” includes every state office, officer, department, division,  
38 bureau, board, and commission, but does not include the California State University  
39 or the University of California.

40 (10) “Subsidized” means units that are price or rent restricted such that the units  
41 are affordable to households meeting the definitions of very low and lower income,  
42 as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

43 (11) “Reporting period” means either of the following:

1 (A) The first half of the regional housing needs assessment cycle.

2 (B) The last half of the regional housing needs assessment cycle.

3 (12) “Urban uses” means any current or former residential, commercial, public  
4 institutional, transit or transportation passenger facility, or retail use, or any  
5 combination of those uses.

6 (j) The department may review, adopt, amend, and repeal guidelines to implement  
7 uniform standards or criteria that supplement or clarify the terms, references, or  
8 standards set forth in this section. Any guidelines or terms adopted pursuant to this  
9 subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340)  
10 of Part 1 of Division 3 of Title 2 of the Government Code.

11 (k) The determination of whether an application for a development is subject to  
12 the streamlined ministerial approval process provided by subdivision (b) is not a  
13 “project” as defined in Section 21065 of the Public Resources Code.

14 (l) It is the policy of the state that this section be interpreted and implemented in  
15 a manner to afford the fullest possible weight to the interest of, and the approval and  
16 provision of, increased housing supply.

17 (m) This section shall remain in effect only until January 1, 2026, and as of that  
18 date is repealed.

19 **Comment.** Section 65913.4(a)(6)(E) is amended to update cross-references in accordance with  
20 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
21 of the Health and Safety Code.

22 **§ 65913.15 (amended). Streamlined approval process for residential or mixed-use**  
23 **development**

24 SEC. \_\_. Section 65913.15 of the Government Code is amended to read:

25 65913.15. (a) Notwithstanding Section 65913.4, a development proponent may  
26 submit an application for a development that is subject to the streamlined,  
27 ministerial approval process provided by subdivision (b) and is not subject to a  
28 conditional use permit if the development satisfies all of the following objective  
29 planning standards:

30 (1) The development is located within the territorial boundaries or a specialized  
31 residential planning area identified in the general plan of, and adjacent to existing  
32 urban development within, any of the following:

33 (A) The City of Biggs.

34 (B) The City of Corning.

35 (C) The City of Gridley.

36 (D) The City of Live Oak.

37 (E) The City of Orland.

38 (F) The City of Oroville.

39 (G) The City of Willows.

40 (H) The City of Yuba City.

41 (2) The development is either a residential development or a mixed-use  
42 development that includes residential units with at least two-thirds of the square

1 footage of the development designated for residential use, not including any land  
2 that may be devoted to open-space or mitigation requirements.

3 (3) The development proponent has held at least one public meeting on the  
4 proposed development before submitting an application pursuant to this  
5 subdivision.

6 (4) The development has a minimum density of at least four units per acre.

7 (5) The development is located on a site that meets both of the following  
8 requirements:

9 (A) The site is no more than 50 acres.

10 (B) The site is zoned for residential use or residential mixed-use development.

11 (6) The development, excluding any additional density or any other concessions,  
12 incentives, or waivers of development standards granted pursuant to the Density  
13 Bonus Law in Section 65915, is consistent with objective zoning standards,  
14 objective subdivision standards, and objective design review standards in effect at  
15 the time that the development is submitted to the local government pursuant to this  
16 section.

17 (7) The development will achieve sustainability standards sufficient to receive a  
18 gold certification under the United States Green Building Council's Leadership in  
19 Energy and Environmental Design for Homes rating system or, in the case of a  
20 mixed-use development, the Neighborhood Development or the New Construction  
21 rating system, or the comparable rating under the GreenPoint rating system or  
22 voluntary tier under the California Green Building Code (Part 11 (commencing with  
23 Section 101) of Title 24 of the California Code of Regulations).

24 (8) The development is not located on a site that is any of the following:

25 (A) Either prime farmland or farmland of statewide importance, as defined  
26 pursuant to United States Department of Agriculture land inventory and monitoring  
27 criteria, as modified for California, and designated on the maps prepared by the  
28 Farmland Mapping and Monitoring Program of the Department of Conservation that  
29 is protected pursuant to the California Land Conservation Act of 1965 (Chapter 7  
30 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), or land zoned  
31 or designated for agricultural protection or preservation by a local ballot measure  
32 that was approved by the voters of that jurisdiction.

33 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,  
34 Part 660 FW 2 (June 21, 1993).

35 (C) Within a very high fire hazard severity zone, as determined by the Department  
36 of Forestry and Fire Protection pursuant to Section 51178, or within a high or very  
37 high fire hazard severity zone as indicated on maps adopted by the Department of  
38 Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

39 (D) A hazardous waste site that is listed pursuant to Section 65962.5 or a  
40 hazardous waste site designated by the Department of Toxic Substances Control  
41 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 68760) of Chapter  
42 4 of Part 2 of Division 45 of the Health and Safety Code, unless the Department of

1 Toxic Substances Control has cleared the site for residential use or residential mixed  
2 uses.

3 (E) Within a delineated earthquake fault zone as determined by the State  
4 Geologist in any official maps published by the State Geologist, unless the  
5 development complies with applicable seismic protection building code standards  
6 adopted by the California Building Standards Commission under the California  
7 Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13  
8 of the Health and Safety Code), and by any local building department under Chapter  
9 12.2 (commencing with Section 8875) of Division 1 of Title 2.

10 (F) Within a special flood hazard area subject to inundation by the 1 percent  
11 annual chance flood (100-year flood) as determined by the Federal Emergency  
12 Management Agency in any official maps published by the Federal Emergency  
13 Management Agency. If a development proponent is able to satisfy all applicable  
14 federal qualifying criteria in order to provide that the site satisfies this subparagraph  
15 and is otherwise eligible for streamlined approval under this section, a local  
16 government shall not deny the application on the basis that the development  
17 proponent did not comply with any additional permit requirement, standard, or  
18 action adopted by that local government that is applicable to that site. A  
19 development may be located on a site described in this subparagraph if either of the  
20 following are met:

21 (i) The site has been subject to a Letter of Map Revision prepared by the Federal  
22 Emergency Management Agency and issued to the local government.

23 (ii) The site meets Federal Emergency Management Agency requirements  
24 necessary to meet minimum flood plain management criteria of the National Flood  
25 Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60  
26 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the  
27 Code of Federal Regulations.

28 (G) Within a regulatory floodway as determined by the Federal Emergency  
29 Management Agency in any official maps published by the Federal Emergency  
30 Management Agency.

31 (H) Lands identified for conservation in an adopted natural community  
32 conservation plan adopted on or before January 1, 2019, pursuant to the Natural  
33 Community Conservation Planning Act (Chapter 10 (commencing with Section  
34 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant  
35 to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or  
36 other adopted natural resource protection plan.

37 (I) Habitat for protected species identified as candidate, sensitive, or species of  
38 special status by state or federal agencies, fully protected species, or species  
39 protected by any of the following:

40 (i) The federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

41 (ii) The California Endangered Species Act (Chapter 1.5 (commencing with  
42 Section 2050) of Division 3 of the Fish and Game Code).

1 (iii) The Native Plant Protection Act (Chapter 10 (commencing with Section  
2 1900) of Division 2 of the Fish and Game Code).

3 (J) Lands under conservation easement.

4 (9) The development does not require the demolition of a historic structure that  
5 was placed on a national, state, or local historic register.

6 (10) The development shall not be upon an existing parcel of land or site that is  
7 governed under any of the following:

8 (A) The Mobilehome Residency Law (Chapter 2.5 (commencing with Section  
9 798) of Title 2 of Part 2 of Division 2 of the Civil Code).

10 (B) The Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing  
11 with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code).

12 (C) The Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of  
13 Division 13 of the Health and Safety Code).

14 (D) The Special Occupancy Parks Act (Part 2.3 (commencing with Section  
15 18860) of Division 13 of the Health and Safety Code).

16 (11)(A) If the development would require the demolition of any affordable  
17 housing units, the development shall replace those units by providing at least the  
18 same number of units of equivalent size to be made available at affordable housing  
19 cost to, and occupied by, persons and families in the same income category as those  
20 households in occupancy. If the income category of the household in occupancy is  
21 not known, it shall be rebuttably presumed that lower income households occupied  
22 the units in the same proportion of lower income households to all households  
23 within the jurisdiction, as determined by the most recently available data from the  
24 United States Department of Housing and Urban Development’s Comprehensive  
25 Housing Affordability Strategy database. All replacement calculations resulting in  
26 fractional units shall be rounded to the next whole number.

27 (B) For purposes of this paragraph, “equivalent size” means that the replacement  
28 units contain at least the same total number of bedrooms as the units being replaced.

29 (b)(1) If a local government determines that a development submitted pursuant to  
30 this section is in conflict with any of the objective planning standards specified in  
31 subdivision (a), it shall provide the development proponent written documentation  
32 of which standard or standards the development conflicts with, and an explanation  
33 for the reason or reasons the development conflicts with that standard or standards,  
34 as follows:

35 (A) Within 60 days of submittal of the development to the local government  
36 pursuant to this section if the development contains 150 or fewer housing units.

37 (B) Within 90 days of submittal of the development to the local government  
38 pursuant to this section if the development contains more than 150 housing units.

39 (2) If the local government fails to provide the required documentation pursuant  
40 to paragraph (1), the development shall be deemed to satisfy the objective planning  
41 standards specified in subdivision (a).

42 (c) Any design review or public oversight of the development may be conducted  
43 by the local government’s planning commission or any equivalent commission

1 responsible for review and approval of development projects or the city council, as  
2 appropriate. That design review or public oversight shall be objective and be strictly  
3 focused on assessing compliance with criteria required for streamlined projects, as  
4 well as any reasonable objective design standards published and adopted by  
5 ordinance or resolution by a local government before submission of a development  
6 application, and shall be broadly applicable to development within the jurisdiction.  
7 That design review or public oversight shall be completed as follows and shall not  
8 in any way inhibit, chill, or preclude the ministerial approval provided by this  
9 section or its effect, as applicable:

10 (1) Within 90 days of submittal of the development to the local government  
11 pursuant to this section if the development contains 150 or fewer housing units.

12 (2) Within 180 days of submittal of the development to the local government  
13 pursuant to this section if the development contains more than 150 housing units.

14 (d) Notwithstanding any other law, a city, whether or not it has adopted an  
15 ordinance governing automobile parking requirements for multifamily  
16 developments, shall not impose automobile parking standards for a streamlined  
17 development that was approved pursuant to this section if the development is  
18 located within one-half mile from a high-quality bus corridor or major transit stop.

19 (e)(1) If a local government approves a development pursuant to this section, then,  
20 notwithstanding any other law, that approval shall not expire if the project includes  
21 public investment in housing affordability and 50 percent of the units are affordable  
22 to households making below 80 percent of the area median income. For purposes of  
23 this paragraph, “public investment in housing affordability” does not include tax  
24 credits.

25 (2) If a local government approves a development pursuant to this section and the  
26 project does not include 50 percent of the units affordable to households making  
27 below 80 percent of the area median income, that approval shall automatically  
28 expire after three years, except that a project may receive a one-time, one-year  
29 extension if the project proponent provides documentation that there has been  
30 significant progress toward getting the development construction ready, such as  
31 filing a building permit application.

32 (3) If a local government approves a development pursuant to this section, that  
33 approval shall remain valid for three years from the date of the final action  
34 establishing that approval and shall remain valid thereafter for a project so long as  
35 vertical construction of the development has begun and is in progress. Additionally,  
36 the development proponent may request, and the local government shall have  
37 discretion to grant, an additional one-year extension to the original three-year  
38 period. The local government’s action and discretion in determining whether to  
39 grant the foregoing extension shall be limited to considerations and process set forth  
40 in this section.

41 (4) If a local government approves a development pursuant to this section, the  
42 local government shall file a notice of that approval with the Office of Planning and  
43 Research.

1 (f)(1) A local government shall not adopt any requirement, including, but not  
2 limited to, increased fees or inclusionary housing requirements, that applies to a  
3 project solely or partially on the basis that the project is eligible to receive  
4 ministerial or streamlined approval pursuant to this section.

5 (2) Notwithstanding paragraph (1), if the local government has adopted a local  
6 ordinance that requires that a specified percentage of the units of a housing  
7 development project be dedicated to households making below 80 percent of the  
8 area median income, that local ordinance applies.

9 (g) This section does not affect a development proponent's ability to use any  
10 alternative streamlined by right permit processing adopted by a local government,  
11 including the provisions of subdivision (i) of Section 65583.2.

12 (h) For purposes of this section, the following terms have the following meanings:

13 (1) "Affordable housing" means housing available at affordable housing cost, and  
14 occupied by, persons and families of low or moderate income as defined by Section  
15 50093 of the Health and Safety Code, lower income households as defined by  
16 Section 50079.5 of the Health and Safety Code, very low income households as  
17 defined by Section 50105 of the Health and Safety Code, and extremely low income  
18 households as defined by Section 50106 of the Health and Safety Code, for a period  
19 of 55 years for rental housing and 45 years for owner-occupied housing.

20 (2) "Affordable housing cost" has the same meaning as "affordable housing cost"  
21 described in Section 50052.5 of the Health and Safety Code.

22 (3) "Area median income" means area median income as periodically established  
23 by the Department of Housing and Community Development pursuant to Section  
24 50093 of the Health and Safety Code.

25 (4) "Development proponent" means the developer who submits an application  
26 for streamlined approval pursuant to this section.

27 (5) "High-quality bus corridor" means a corridor with fixed route bus service with  
28 service intervals no longer than 15 minutes during peak commute hours.

29 (6) "Local government" means a city or a county, including a charter city or a  
30 charter county, that has jurisdiction over a development for which a development  
31 proponent submits an application pursuant to this section.

32 (7) "Major transit stop" means a site containing an existing rail transit station, a  
33 ferry terminal served by either a bus or rail transit service, or the intersection of two  
34 or more major bus routes with a frequency of service interval of 15 minutes or less  
35 during the morning and afternoon peak commute periods. "Major transit stop" shall  
36 also include major transit stops included in a regional transportation plan adopted  
37 pursuant to Chapter 2.5 (commencing with Section 65080).

38 (8)(A) "Objective zoning standards," "objective subdivision standards," and  
39 "objective design review standards" mean standards that involve no personal or  
40 subjective judgment by a public official and are uniformly verifiable by reference  
41 to an external and uniform benchmark or criterion available and knowable by both  
42 the development applicant or proponent and the public official before submittal.  
43 These standards may be embodied in alternative objective land use specifications

1 adopted by a local government, and may include, but are not limited to, housing  
2 overlay zones, specific plans, inclusionary zoning ordinances, and density bonus  
3 ordinances, subject to subparagraph (B).

4 (B) A development shall be deemed consistent with the objective zoning standards  
5 related to housing density, as applicable, if the density proposed is consistent with  
6 the allowable residential density within that land use designation, notwithstanding  
7 any specified unit allocation.

8 (i) This section shall remain in effect only until January 1, 2026, and as of that  
9 date is repealed.

10 **Comment.** Section 65913.15(a)(8)(D) is amended to update cross-references in accordance with  
11 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
12 of the Health and Safety Code.

13 **§ 65941.1 (amended). Submission of preliminary application for housing development**  
14 **project**

15 SEC. \_\_. Section 65941.1 of the Government Code is amended to read:

16 65941.1. (a) An applicant for a housing development project, as defined in  
17 paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have  
18 submitted a preliminary application upon providing all of the following information  
19 about the proposed project to the city, county, or city and county from which  
20 approval for the project is being sought and upon payment of the permit processing  
21 fee:

22 (1) The specific location, including parcel numbers, a legal description, and site  
23 address, if applicable.

24 (2) The existing uses on the project site and identification of major physical  
25 alterations to the property on which the project is to be located.

26 (3) A site plan showing the location on the property, elevations showing design,  
27 color, and material, and the massing, height, and approximate square footage, of  
28 each building that is to be occupied.

29 (4) The proposed land uses by number of units and square feet of residential and  
30 nonresidential development using the categories in the applicable zoning ordinance.

31 (5) The proposed number of parking spaces.

32 (6) Any proposed point sources of air or water pollutants.

33 (7) Any species of special concern known to occur on the property.

34 (8) Whether a portion of the property is located within any of the following:

35 (A) A very high fire hazard severity zone, as determined by the Department of  
36 Forestry and Fire Protection pursuant to Section 51178.

37 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,  
38 Part 660 FW 2 (June 21, 1993).

39 (C) A hazardous waste site that is listed pursuant to Section 65962.5 or a  
40 hazardous waste site designated by the Department of Toxic Substances Control  
41 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 68760) of Chapter  
42 4 of Part 2 of Division 45 of the Health and Safety Code.

1 (D) A special flood hazard area subject to inundation by the 1 percent annual  
2 chance flood (100-year flood) as determined by the Federal Emergency  
3 Management Agency in any official maps published by the Federal Emergency  
4 Management Agency.

5 (E) A delineated earthquake fault zone as determined by the State Geologist in  
6 any official maps published by the State Geologist, unless the development  
7 complies with applicable seismic protection building code standards adopted by the  
8 California Building Standards Commission under the California Building Standards  
9 Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and  
10 Safety Code), and by any local building department under Chapter 12.2  
11 (commencing with Section 8875) of Division 1 of Title 2.

12 (F) A stream or other resource that may be subject to a streambed alteration  
13 agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of  
14 the Fish and Game Code.

15 (9) Any historic or cultural resources known to exist on the property.

16 (10) The number of proposed below market rate units and their affordability  
17 levels.

18 (11) The number of bonus units and any incentives, concessions, waivers, or  
19 parking reductions requested pursuant to Section 65915.

20 (12) Whether any approvals under the Subdivision Map Act, including, but not  
21 limited to, a parcel map, a tentative map, or a condominium map, are being  
22 requested.

23 (13) The applicant's contact information and, if the applicant does not own the  
24 property, consent from the property owner to submit the application.

25 (14) For a housing development project proposed to be located within the coastal  
26 zone, whether any portion of the property contains any of the following:

27 (A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the  
28 California Code of Regulations.

29 (B) Environmentally sensitive habitat areas, as defined in Section 30240 of the  
30 Public Resources Code.

31 (C) A tsunami run-up zone.

32 (D) Use of the site for public access to or along the coast.

33 (15) The number of existing residential units on the project site that will be  
34 demolished and whether each existing unit is occupied or unoccupied.

35 (16) A site map showing a stream or other resource that may be subject to a  
36 streambed alteration agreement pursuant to Chapter 6 (commencing with Section  
37 1600) of Division 2 of the Fish and Game Code and an aerial site photograph  
38 showing existing site conditions of environmental site features that would be subject  
39 to regulations by a public agency, including creeks and wetlands.

40 (17) The location of any recorded public easement, such as easements for storm  
41 drains, water lines, and other public rights of way.

1 (b)(1) Each local agency shall compile a checklist and application form that  
2 applicants for housing development projects may use for the purpose of satisfying  
3 the requirements for submittal of a preliminary application.

4 (2) The Department of Housing and Community Development shall adopt a  
5 standardized form that applicants for housing development projects may use for the  
6 purpose of satisfying the requirements for submittal of a preliminary application if  
7 a local agency has not developed its own application form pursuant to paragraph  
8 (1). Adoption of the standardized form shall not be subject to Chapter 3.5  
9 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
10 Government Code.

11 (3) A checklist or form shall not require or request any information beyond that  
12 expressly identified in subdivision (a).

13 (c) After submittal of all of the information required by subdivision (a), if the  
14 development proponent revises the project such that the number of residential units  
15 or square footage of construction changes by 20 percent or more, exclusive of any  
16 increase resulting from the receipt of a density bonus, incentive, concession, waiver,  
17 or similar provision, the housing development project shall not be deemed to have  
18 submitted a preliminary application that satisfies this section until the development  
19 proponent resubmits the information required by subdivision (a) so that it reflects  
20 the revisions. For purposes of this subdivision, “square footage of construction”  
21 means the building area, as defined by the California Building Standards Code (Title  
22 24 of the California Code of Regulations).

23 (d)(1) Within 180 calendar days after submitting a preliminary application with  
24 all of the information required by subdivision (a) to a city, county, or city and  
25 county, the development proponent shall submit an application for a development  
26 project that includes all of the information required to process the development  
27 application consistent with Sections 65940, 65941, and 65941.5.

28 (2) If the public agency determines that the application for the development  
29 project is not complete pursuant to Section 65943, the development proponent shall  
30 submit the specific information needed to complete the application within 90 days  
31 of receiving the agency’s written identification of the necessary information. If the  
32 development proponent does not submit this information within the 90-day period,  
33 then the preliminary application shall expire and have no further force or effect.

34 (3) This section shall not require an affirmative determination by a city, county,  
35 or city and county regarding the completeness of a preliminary application or a  
36 development application for purposes of compliance with this section.

37 (e) This section shall remain in effect only until January 1, 2025, and as of that  
38 date is repealed.

39 **Comment.** Section 65941.1(a)(8)(C) is amended to update cross-references in accordance with  
40 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
41 of the Health and Safety Code.

1 **§ 65962.5 (amended). Information related to hazardous waste and substances**

2 SEC. \_\_\_. Section 65962.5 of the Government Code is amended to read:

3 65962.5. (a) The Department of Toxic Substances Control shall compile and  
4 update as appropriate, but at least annually, and shall submit to the Secretary for  
5 Environmental Protection, a list of all of the following:

6 (1) All hazardous waste facilities subject to corrective action pursuant to Section  
7 25187.5 of the Health and Safety Code.

8 (2) All land designated as hazardous waste property or border zone property  
9 pursuant to former Article 11 (commencing with Section 25220) of Chapter 6.5 of  
10 Division 20 of the Health and Safety Code.

11 (3) All information received by the Department of Toxic Substances Control  
12 pursuant to Section 25242 of the Health and Safety Code on hazardous waste  
13 disposals on public land.

14 (4) All sites listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section  
15 68760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

16 (b) The State Department of Health Services shall compile and update as  
17 appropriate, but at least annually, and shall submit to the Secretary for  
18 Environmental Protection, a list of all public drinking water wells that contain  
19 detectable levels of organic contaminants and that are subject to water analysis  
20 pursuant to Section 116395 of the Health and Safety Code.

21 (c) The State Water Resources Control Board shall compile and update as  
22 appropriate, but at least annually, and shall submit to the Secretary for  
23 Environmental Protection, a list of all of the following:

24 (1) All underground storage tanks for which an unauthorized release report is filed  
25 pursuant to Section 25295 of the Health and Safety Code.

26 (2) All solid waste disposal facilities from which there is a migration of hazardous  
27 waste and for which a California regional water quality control board has notified  
28 the Department of Toxic Substances Control pursuant to subdivision (e) of Section  
29 13273 of the Water Code.

30 (3) All cease and desist orders issued after January 1, 1986, pursuant to Section  
31 13301 of the Water Code, and all cleanup or abatement orders issued after January  
32 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge  
33 of wastes that are hazardous materials.

34 (d) The local enforcement agency, as designated pursuant to Section 18051 of  
35 Title 14 of the California Code of Regulations, shall compile as appropriate, but at  
36 least annually, and shall submit to the Department of Resources Recycling and  
37 Recovery, a list of all solid waste disposal facilities from which there is a known  
38 migration of hazardous waste. The Department of Resources Recycling and  
39 Recovery shall compile the local lists into a statewide list, which shall be submitted  
40 to the Secretary for Environmental Protection and shall be available to any person  
41 who requests the information.

42 (e) The Secretary for Environmental Protection shall consolidate the information  
43 submitted pursuant to this section and distribute it in a timely fashion to each city

1 and county in which sites on the lists are located. The secretary shall distribute the  
2 information to any other person upon request. The secretary may charge a  
3 reasonable fee to persons requesting the information, other than cities, counties, or  
4 cities and counties, to cover the cost of developing, maintaining, and reproducing  
5 and distributing the information.

6 (f) Before a lead agency accepts as complete an application for any development  
7 project which will be used by any person, the applicant shall consult the lists sent to  
8 the appropriate city or county and shall submit a signed statement to the local agency  
9 indicating whether the project and any alternatives are located on a site that is  
10 included on any of the lists compiled pursuant to this section and shall specify any  
11 list. If the site is included on a list, and the list is not specified on the statement, the  
12 lead agency shall notify the applicant pursuant to Section 65943. The statement shall  
13 read as follows:

**HAZARDOUS WASTE AND SUBSTANCES STATEMENT**

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:

Address:

Phone number:

Address of site (street name and number if available, and ZIP Code):

Local agency (city/county):

Assessor's book, page, and parcel number:

Specify any list pursuant to Section 65962.5 of the Government Code:

Regulatory identification number:

Date of list:

\_\_\_\_\_ Applicant, Date \_\_\_\_\_

14 (g) The changes made to this section by the act amending this section, that takes  
15 effect January 1, 1992, apply only to projects for which applications have not been  
16 deemed complete on or before January 1, 1992, pursuant to Section 65943.

17 **Comment.** Section 65962.5(a)(4) is amended to update cross-references in accordance with the  
18 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
19 the Health and Safety Code.

**HEALTH AND SAFETY CODE**

21 **§ 11374.5 (amended). Penalties for disposal of hazardous substance related to manufacture**  
22 **of controlled substance**

23 SEC. \_\_. Section 11374.5 of the Health and Safety Code is amended to read:

1 11374.5. (a) Any manufacturer of a controlled substance who disposes of any  
2 hazardous substance that is a controlled substance or a chemical used in, or is a  
3 byproduct of, the manufacture of a controlled substance in violation of any law  
4 regulating the disposal of hazardous substances or hazardous waste is guilty of a  
5 public offense punishable by imprisonment pursuant to subdivision (h) of Section  
6 1170 of the Penal Code for two, three, or four years or in the county jail not  
7 exceeding one year.

8 (b)(1) In addition to any other penalty or liability imposed by law, a person who  
9 is convicted of violating subdivision (a), or any person who is convicted of the  
10 manufacture, sale, possession for sale, possession, transportation, or disposal of any  
11 hazardous substance that is a controlled substance or a chemical used in, or is a  
12 byproduct of, the manufacture of a controlled substance in violation of any law,  
13 shall pay a penalty equal to the amount of the actual cost incurred by the state or  
14 local agency to remove and dispose of the hazardous substance that is a controlled  
15 substance or a chemical used in, or is a byproduct of, the manufacture of a controlled  
16 substance and to take removal action with respect to any release of the hazardous  
17 substance or any items or materials contaminated by that release, if the state or local  
18 agency requests the prosecuting authority to seek recovery of that cost. The court  
19 shall transmit all penalties collected pursuant to this subdivision to the county  
20 treasurer of the county in which the court is located for deposit in a special account  
21 in the county treasury. The county treasurer shall pay that money at least once a  
22 month to the agency that requested recovery of the cost for the removal action. The  
23 county may retain up to 5 percent of any assessed penalty for appropriate and  
24 reasonable administrative costs attributable to the collection and disbursement of  
25 the penalty.

26 (2) If the Department of Toxic Substances Control has requested recovery of the  
27 cost of removing the hazardous substance that is a controlled substance or a  
28 chemical used in, or is a byproduct of, the manufacture of a controlled substance or  
29 taking removal action with respect to any release of the hazardous substance, the  
30 county treasurer shall transfer funds in the amount of the penalty collected to the  
31 Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account,  
32 which is hereby created in the General Fund in the State Treasury. The Department  
33 of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup  
34 Account, upon appropriation by the Legislature, to cover the cost of taking removal  
35 actions pursuant to ~~Section 25354.5.~~ Article 16 (commencing with Section 69350)  
36 of Chapter 5 of Part 2 of Division 45.

37 (3) If a local agency and the Department of Toxic Substances Control have both  
38 requested recovery of removal costs with respect to a hazardous substance that is a  
39 controlled substance or a chemical used in, or is a byproduct of, the manufacture of  
40 a controlled substance, the county treasurer shall apportion any penalty collected  
41 among the agencies involved in proportion to the costs incurred.

42 (c) As used in this section the following terms have the following meaning:

1 (1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final  
2 action after use has been achieved or a use is no longer intended.

3 (2) “Hazardous substance” has the same meaning as defined in ~~Section 25316-~~  
4 subdivision (a) of Section 68075.

5 (3) “Hazardous waste” has the same meaning as defined in Section 25117.

6 (4) For purposes of this section, “remove” or “removal” has the same meaning as  
7 set forth in Section ~~25323-~~ 68135.

8 **Comment.** Section 11374.5(b)(2), (c)(2), and (c)(4) are amended to update cross-references in  
9 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
10 25300) of Division 20 of the Health and Safety Code.

11 **Note.** Section 11374.5(b)(2) cross-refers to Section 25354.5. Section 25354.5 is proposed for  
12 recodification as multiple provisions. With the exception of one provision governing the Illegal  
13 Drug Lab Cleanup Account (proposed Section 68370), all of the provisions of Section 25354.5 are  
14 proposed for recodification in Article 16 (commencing with Section 69350) of Chapter 5 of Part 2  
15 of Division 45. The cross-reference to Section 25354.5 was updated to refer only to Article 16, as  
16 the rules governing funding and expenditure of the Illegal Drug Lab Cleanup Account do not appear  
17 to be relevant to the purpose of this cross-reference.

18 **Absent comment, this proposed cross-reference update will be presumed correct.**

19 **§ 11470.1 (amended). Cost recovery for controlled substance remedial action**

20 SEC. \_\_. Section 11470.1 of the Health and Safety Code is amended to read:

21 11470.1. (a) The expenses of seizing, eradicating, destroying, or taking remedial  
22 action with respect to, any controlled substance or its precursors shall be recoverable  
23 from:

24 (1) Any person who manufactures or cultivates a controlled substance or its  
25 precursors in violation of this division.

26 (2) Any person who aids and abets or who knowingly profits in any manner from  
27 the manufacture or cultivation of a controlled substance or its precursors on property  
28 owned, leased, or possessed by the defendant, in violation of this division.

29 (b) The expenses of taking remedial action with respect to any controlled  
30 substance or its precursors shall also be recoverable from any person liable for the  
31 costs of that remedial action under ~~Chapter 6.8 (commencing with Section 25300)~~  
32 of Division 20 Part 2 (commencing with Section 68000) of Division 45 of the Health  
33 and Safety Code.

34 (c) It shall be necessary to seek or obtain a criminal conviction for the unlawful  
35 manufacture or cultivation of any controlled substance or its precursors prior to the  
36 entry of judgment for the recovery of expenses. If criminal charges are pending  
37 against the defendant for the unlawful manufacture or cultivation of any controlled  
38 substance or its precursors, an action brought pursuant to this section shall, upon a  
39 defendant’s request, be continued while the criminal charges are pending.

40 (d) The action may be brought by the district attorney, county counsel, city  
41 attorney, the State Department of Health Care Services, or Attorney General. All  
42 expenses recovered pursuant to this section shall be remitted to the law enforcement  
43 agency which incurred them.

1 (e)(1) The burden of proof as to liability shall be on the plaintiff and shall be by a  
2 preponderance of the evidence in an action alleging that the defendant is liable for  
3 expenses pursuant to paragraph (1) of subdivision (a). The burden of proof as to  
4 liability shall be on the plaintiff and shall be by clear and convincing evidence in an  
5 action alleging that the defendant is liable for expenses pursuant to paragraph (2) of  
6 subdivision (a). The burden of proof as to the amount of expenses recoverable shall  
7 be on the plaintiff and shall be by a preponderance of the evidence in any action  
8 brought pursuant to subdivision (a).

9 (2) Notwithstanding paragraph (1), for any person convicted of a criminal charge  
10 of the manufacture or cultivation of a controlled substance or its precursors there  
11 shall be a presumption affecting the burden of proof that the person is liable.

12 (f) Only expenses which meet the following requirements shall be recoverable  
13 under this section:

14 (1) The expenses were incurred in seizing, eradicating, or destroying the  
15 controlled substance or its precursors or in taking remedial action with respect to a  
16 hazardous substance. These expenses may not include any costs incurred in use of  
17 the herbicide paraquat.

18 (2) The expenses were incurred as a proximate result of the defendant's  
19 manufacture or cultivation of a controlled substance in violation of this division.

20 (3) The expenses were reasonably incurred.

21 (g) For purposes of this section, "remedial action" shall have the meaning set forth  
22 in Section ~~25322~~: 68125.

23 (h) For the purpose of discharge in bankruptcy, a judgment for recovery of  
24 expenses under this section shall be deemed to be a debt for willful and malicious  
25 injury by the defendant to another entity or to the property of another entity.

26 (i) Notwithstanding Section 526 of the Code of Civil Procedure, the plaintiff may  
27 be granted a temporary restraining order or a preliminary injunction, pending or  
28 during trial, to restrain the defendant from transferring, encumbering,  
29 hypothecating, or otherwise disposing of any assets specified by the court, if it  
30 appears by the complaint that the plaintiff is entitled to the relief demanded and it  
31 appears that the defendant may dispose of those assets to thwart enforcement of the  
32 judgment.

33 (j) The Legislature finds and declares that civil penalties for the recovery of  
34 expenses incurred in enforcing the provisions of this division shall not supplant  
35 criminal prosecution for violation of those provisions, but shall be a supplemental  
36 remedy to criminal enforcement.

37 (k) Any testimony, admission, or any other statement made by the defendant in  
38 any proceeding brought pursuant to this section, or any evidence derived from the  
39 testimony, admission, or other statement, shall not be admitted or otherwise used in  
40 any criminal proceeding arising out of the same conduct.

41 (l) No action shall be brought or maintained pursuant to this section against a  
42 person who has been acquitted of criminal charges for conduct that is the basis for  
43 an action under this section.

1 **Comment.** Section 11470.1(b) and (g) are amended to update cross-references in accordance  
2 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
3 Division 20 of the Health and Safety Code.

4 **§ 13009.6 (amended). Emergency response expenses**

5 SEC. \_\_. Section 13009.6 of the Health and Safety Code is amended to read:

6 13009.6. (a)(1) Those expenses of an emergency response necessary to protect the  
7 public from a real and imminent threat to health and safety by a public agency to  
8 confine, prevent, or mitigate the release, escape, or burning of hazardous substances  
9 described in subdivision (c) are a charge against any person whose negligence  
10 causes the incident, if either of the following occurs:

11 (A) Evacuation from the building, structure, property, or public right-of-way  
12 where the incident originates is necessary to prevent loss of life or injury.

13 (B) The incident results in the spread of hazardous substances or fire posing a real  
14 and imminent threat to public health and safety beyond the building, structure,  
15 property, or public right-of-way where the incident originates.

16 (2) Expenses reimbursable to a public agency under this section are a debt of the  
17 person liable therefor, and shall be collectible in the same manner as in the case of  
18 an obligation under contract, express or implied.

19 (3) The charge created against the person by this subdivision is also a charge  
20 against the person's employer if the negligence causing the incident occurs in the  
21 course of the person's employment.

22 (4) The public agencies participating in an emergency response meeting the  
23 requirements of paragraph (1) of this subdivision may designate one or more of the  
24 participating agencies to bring an action to recover the expenses incurred by all of  
25 the designating agencies which are reimbursable under this section.

26 (5) An action to recover expenses under this section may be joined with any civil  
27 action for penalties, fines, injunctive, or other relief brought against the responsible  
28 person or employer, or both, arising out of the same incident.

29 (b) There shall be deducted from any amount otherwise recoverable under this  
30 section, the amount of any reimbursement for eligible costs received by a public  
31 agency pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20.~~  
32 Part 2 (commencing with Section 68000) of Division 45. The amount so reimbursed  
33 may be recovered as provided in Section ~~25360.~~ 69650.

34 (c) As used in this section, "hazardous substance" means any hazardous substance  
35 listed in ~~Section 25316~~ subdivision (a) of Section 68075 or subdivision (q) of  
36 Section 25501 of this code, or in Section 6382 of the Labor Code.

37 (d) As used in this section, "mitigate" includes actions by a public agency to  
38 monitor or model ambient levels of airborne hazardous substances for the purpose  
39 of determining or assisting in the determination of whether or not to evacuate areas  
40 around the property where the incident originates, or to determine or assist in the  
41 determination of which areas around the property where the incident originates  
42 should be evacuated.

1 **Comment.** Section 13009.6 is amended to update cross-references in accordance with the  
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
3 the Health and Safety Code.

4 **§ 17021.8 (amended). Streamlined approval process for eligible agricultural employee**  
5 **housing development**

6 SEC. \_\_. Section 17021.8 of the Health and Safety Code is amended to read:

7 17021.8. (a) A development proponent may submit an application for a  
8 development that is subject to a streamlined, ministerial approval process, provided  
9 in subdivision (b), and is not subject to a conditional use permit if all of the  
10 following requirements are met:

11 (1) The development is located on land zoned for primarily agricultural uses.

12 (2) The development is not located on a site that is any of the following:

13 (A) Within the coastal zone, as defined in Division 20 (commencing with Section  
14 30000) of the Public Resources Code.

15 (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual,  
16 Part 660 FW 2 (June 21, 1993).

17 (C) Within a very high fire hazard severity zone, as determined by the Department  
18 of Forestry and Fire Protection pursuant to Section 51178 of the Government Code,  
19 or within a high or very high fire hazard severity zone as indicated on maps adopted  
20 by the Department of Forestry and Fire Protection pursuant to Section 4202 of the  
21 Public Resources Code.

22 (D) A hazardous waste site that is listed pursuant to Section 65962.5 of the  
23 Government Code or a hazardous waste site designated by the Department of Toxic  
24 Substances Control pursuant to ~~Section 25356, Article 5 (commencing with Section~~  
25 68760) of Chapter 4 of Part 2 of Division 45, unless the Department of Toxic  
26 Substances Control has cleared the site for residential use or residential mixed uses.

27 (E) Within a delineated earthquake fault zone as determined by the State  
28 Geologist in any official maps published by the State Geologist, unless the  
29 development complies with applicable seismic protection building code standards  
30 adopted by the California Building Standards Commission under the California  
31 Building Standards Law (Part 2.5 (commencing with Section 18901)), and by any  
32 local building department under Chapter 12.2 (commencing with Section 8875) of  
33 Division 1 of Title 2 of the Government Code.

34 (F) Within a flood plain as determined by maps promulgated by the Federal  
35 Emergency Management Agency, unless the development has been issued a flood  
36 plain development permit pursuant to Part 59 (commencing with Section 59.1) and  
37 Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of  
38 the Code of Federal Regulations.

39 (G) Within a floodway as determined by maps promulgated by the Federal  
40 Emergency Management Agency.

41 (H) Lands identified for conservation in an adopted natural community  
42 conservation plan pursuant to the Natural Community Conservation Planning Act

1 (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game  
2 Code), habitat conservation plan pursuant to the federal Endangered Species Act of  
3 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection  
4 plan.

5 (I) Lands under conservation easement. For purposes of this section,  
6 “conservation easement” shall not include a contract executed pursuant to the  
7 Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title  
8 5 of the Government Code).

9 (J) Lands with groundwater levels within five feet of the soil surface and for which  
10 the development would be served by an onsite wastewater disposal system serving  
11 more than six family housing units.

12 (3) The development is an eligible agricultural employee housing development  
13 that satisfies the requirements specified in subdivision (i).

14 (b)(1) If a local government determines that a development submitted pursuant to  
15 this section does not meet the requirements specified in subdivision (a), the local  
16 government shall provide the development proponent written documentation of  
17 which requirement or requirements the development does not satisfy and an  
18 explanation for the reason or reasons the development does not satisfy the  
19 requirement or requirements, as follows:

20 (A) Within 30 days of submission of the development to the local government  
21 pursuant to this section if the development contains 50 or fewer housing units.

22 (B) Within 60 days of submission of the development to the local government  
23 pursuant to this section if the development contains more than 50 housing units.

24 (2) If the local government fails to provide the required documentation pursuant  
25 to paragraph (1), the development shall be deemed to satisfy the requirements  
26 specified in paragraph (2) of subdivision (a).

27 (c) The local government’s planning commission or an equivalent board or  
28 commission responsible for review and approval of development projects, or the  
29 city council or board of supervisors, as appropriate, may conduct a development  
30 review or public oversight of the development. The development review or public  
31 oversight shall be objective and be strictly focused on assessing compliance with  
32 criteria required for streamlined projects, as well as any reasonable objective  
33 development standards described in this section. For purposes of this subdivision,  
34 “objective development standards” mean standards that involve no personal or  
35 subjective judgment by a public official and are uniformly verifiable by reference  
36 to an external and uniform benchmark or criterion available and knowable by both  
37 the development applicant or proponent and the public official prior to submission.  
38 The development review or public oversight shall be completed as follows and shall  
39 not in any way inhibit, chill, or preclude the ministerial approval provided by this  
40 section or its effect, as applicable:

41 (1) Within 90 days of submission of the development to the local government  
42 pursuant to this section if the development contains 50 or fewer housing units.

1 (2) Within 180 days of submission of the development to the local government  
2 pursuant to this section if the development contains more than 50 housing units.

3 (d) An agricultural employee housing development that is approved pursuant to  
4 this section shall not be subject to the density limits specified in Section 17021.6 in  
5 order to constitute an agricultural land use for purposes of that section.

6 (e) Notwithstanding Section 17021.6, a local government may subject an  
7 agricultural employee housing development that is approved pursuant to this section  
8 to the following written, objective development standards:

9 (1)(A) A requirement that the development have adequate water and wastewater  
10 facilities and dry utilities to serve the project.

11 (B) A requirement that the development be connected to an existing public water  
12 system that has not been identified as failing or being at risk of failing to provide an  
13 adequate supply of safe drinking water.

14 (C) If the development proposes to include 10 or more units, a requirement that  
15 the development connect to an existing municipal sewer system that has adequate  
16 capacity to serve the project. If the local agency has adopted an approved local  
17 agency management program for onsite wastewater treatment systems, those  
18 requirements shall apply to the development.

19 (2) A requirement that the property on which the development is located be either:

20 (A) Within one-half mile of a duly designated collector road with an Average  
21 Daily Trips (ADT) of 6,000 or greater.

22 (B) Adjacent to a duly designated collector road with an ADT of 2,000 or greater.

23 (3) A requirement that the development include off-street parking based upon  
24 demonstrated need, provided that the standards do not require more parking for  
25 eligible agricultural employee housing developments than for other residential uses  
26 of similar size within the jurisdiction.

27 (4) Notwithstanding Section 17020 or any other law, health, safety, and welfare  
28 standards for agricultural employee housing, including, but not limited to, density,  
29 minimum living space per occupant, minimum sanitation facilities, minimum  
30 sanitation requirements, and similar standards.

31 (5) Standards requiring that if a potential for exposure to significant hazards from  
32 surrounding properties or activities is found to exist, the effects of the potential  
33 exposure shall be mitigated to a level of insignificance in compliance with state and  
34 federal requirements.

35 (f) Neither the approval of a development pursuant to this section, including the  
36 permit processing, nor the application of development standards pursuant to this  
37 section shall be deemed to be discretionary acts within the meaning of the California  
38 Environmental Quality Act (Division 13 (commencing with Section 21000) of the  
39 Public Resources Code).

40 (g) Notwithstanding Section 17021.6, a local agency may impose fees and other  
41 exactions otherwise authorized by law that are essential to provide necessary public  
42 services and facilities to the eligible agricultural employee housing development.

43 (h) This section shall not be construed to:

1 (1) Prohibit a local agency from requiring an eligible agricultural employee  
2 housing development to comply with objective, quantifiable, written development  
3 standards, conditions, and policies that are consistent with subdivision (e) and  
4 appropriate to, and consistent with, meeting the jurisdiction’s need for farmworker  
5 housing, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583  
6 of the Government Code.

7 (2) Prohibit a local agency from disapproving an eligible agricultural employee  
8 housing development if the eligible agricultural employee housing development as  
9 proposed would have a specific, adverse impact upon the public health or safety,  
10 and there is no feasible method to satisfactorily mitigate or avoid the specific,  
11 adverse impact without rendering the development unaffordable to lower income  
12 households, as defined in Section 50079.5, or rendering the development financially  
13 infeasible. As used in this paragraph, a “specific, adverse impact” means a  
14 significant, quantifiable, direct, and unavoidable impact, based on objective,  
15 identified written public health or safety standards, policies, or conditions as they  
16 existed on the date the application was deemed complete.

17 (3) Prohibit a local agency from disapproving an eligible agricultural employee  
18 housing development if that project would be in violation of any applicable state or  
19 federal law.

20 (4) Change any obligations to comply with any other existing laws, including, but  
21 not limited to, Section 116527, Section 106.4 of the Water Code, Division 7  
22 (commencing with Section 13000) of the Water Code, and Part 12 (commencing  
23 with Section 116270) of Division 104.

24 (i) For the purposes of this section, “eligible agricultural employee housing  
25 development” means an agricultural employee housing development that satisfies  
26 all of the following:

27 (1) The agricultural employee housing does not contain dormitory-style housing.

28 (2) The development consists of no more than 36 units or spaces designed for use  
29 by a single family or household.

30 (3)(A) Except as otherwise provided in subparagraph (B), the agricultural  
31 employee housing will be maintained and operated by a qualified affordable housing  
32 organization that has been certified pursuant to Section 17030.10. The development  
33 proponent shall submit proof of issuance of the qualified affordable housing  
34 organization’s certification to the enforcement agency. The qualified affordable  
35 housing organization shall provide for onsite management of the development.

36 (B) In the case of agricultural employee housing that is maintained and operated  
37 by a local public housing agency or a multicounty, state, or multistate agency that  
38 has been certified as a qualified affordable housing organization as required by this  
39 paragraph, that agency either directly maintains and operates the agricultural  
40 employee housing or contracts with another qualified affordable housing  
41 organization that has been certified pursuant to Section 17030.10.

42 (C) The local government ensures an affordability covenant is recorded on the  
43 property to ensure the affordability of the proposed agricultural employee housing

1 for agricultural employees for not less than 35 years. For purposes of this paragraph,  
2 “affordability” means the agricultural housing is made available at an affordable  
3 rent, as defined in Section 50053, to lower income households, as defined in Section  
4 50079.5.

5 (4) The agricultural employee housing is not ineligible for state funding pursuant  
6 to paragraph (1) of subdivision (b) of Section 50205.

7 (j) The Legislature hereby declares that it is the policy of this state that each  
8 county and city shall permit and encourage the development and use of sufficient  
9 numbers and types of agricultural employee housing as are commensurate with local  
10 need. The Legislature further finds and declares that this section addresses a matter  
11 of statewide concern rather than a municipal affair as that term is used in Section 5  
12 of Article XI of the California Constitution. Therefore, this section applies to all  
13 cities, including charter cities.

14 **Comment.** Section 17021.8(a)(2)(D) is amended to update cross-references in accordance with  
15 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
16 of the Health and Safety Code.

17 **§ 25117.13 (amended). “Land use restriction”**

18 SEC. \_\_. Section 25117.13 of the Health and Safety Code is amended to read:

19 25117.13. “Land use restriction” means any limitation regarding the uses of  
20 property which may be provided by, but is not limited to, a written instrument which  
21 imposes an easement, covenant, restriction, or servitude, or a combination thereof,  
22 as appropriate, upon the present and future uses of all, or part of, the land, pursuant  
23 to Section 25202.5, 25222.1, 25230, or ~~25355.5~~; 69055.

24 **Comment.** Section 25117.13 is amended to update cross-references in accordance with the  
25 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
26 the Health and Safety Code.

27 **Note.** Section 25117.13 cross-refers to Section 25355.5 as a section authorizing imposition of a  
28 land use restriction. Section 25355.5 has been proposed for recodification as multiple sections. Of  
29 the proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land  
30 use restrictions. For this reason, the cross-reference has been updated to refer to Section 69055.

31 **Absent comment, this proposed cross-reference update will be presumed correct.**

32 **§ 25122.8 (amended). “State operational costs”**

33 SEC. \_\_. Section 25122.8 of the Health and Safety Code is amended to read:

34 25122.8. “State operational costs” means the costs to the state of overseeing  
35 removal and remedial action, as defined in Sections ~~25322 and 25323~~; 68125 and  
36 68135, to releases of hazardous substances, as defined in Sections ~~25316 and 25320~~,  
37 subdivision (a) of Section 68075 and subdivision (a) of Section 68105, if the  
38 responsible party is in compliance with an order issued, or with an enforceable  
39 agreement entered into, pursuant to paragraph (1) of subdivision (a) of Section  
40 ~~25355.5~~; 69055. “State operational costs” include, but are not limited to, the  
41 expenditure of funds pursuant to ~~subdivision (c) or (d) of Section 25355.5~~; Section  
42 69065.

1       **Comment.** Section 25122.8 is amended to update cross-references in accordance with the  
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
3 the Health and Safety Code.

4       **§ 25123.3 (amended). “Storage facility”**

5       SEC. \_\_\_. Section 25123.3 of the Health and Safety Code is amended to read:

6       25123.3. (a) For purposes of this section, the following terms have the following  
7 meanings:

8       (1) “Liquid hazardous waste” means a hazardous waste that meets the definition  
9 of free liquids, as specified in Section 66260.10 of Title 22 of the California Code  
10 of Regulations, as that section read on January 1, 1994.

11       (2) “Remediation waste staging” means the temporary accumulation of non-  
12 RCRA contaminated soil that is generated and held onsite, and that is accumulated  
13 for the purpose of onsite treatment pursuant to a certified, authorized, or permitted  
14 treatment method, such as a transportable treatment unit, if all of the following  
15 requirements are met:

16       (A) The hazardous waste being accumulated does not contain free liquids.

17       (B) The hazardous waste is accumulated on an impermeable surface, such as high  
18 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,  
19 or high density polyethylene of at least 60 mils that is not supported by a foundation.

20       (C) The generator provides controls for windblown dispersion and precipitation  
21 runoff and run-on and complies with any stormwater permit requirements issued by  
22 a regional water quality control board.

23       (D) The generator has the accumulation site inspected weekly and after storms to  
24 ensure that the controls for windblown dispersion and precipitation runoff and run-  
25 on are functioning properly.

26       (E) The staging area is certified by a registered engineer for compliance with the  
27 standards specified in subparagraphs (A) to (D), inclusive.

28       (3) “Transfer facility” means any offsite facility that is related to the transportation  
29 of hazardous waste, including, but not limited to, loading docks, parking areas,  
30 storage areas, and other similar areas where shipments of hazardous waste are held  
31 during the normal course of transportation.

32       (b) “Storage facility” means a hazardous waste facility at which the hazardous  
33 waste meets any of the following requirements:

34       (1) The hazardous waste is held for greater than 90 days at an onsite facility. The  
35 department may establish criteria and procedures to extend that 90-day period,  
36 consistent with the federal act, and to prescribe the manner in which the hazardous  
37 waste may be held if not otherwise prescribed by statute.

38       (2) The hazardous waste is held for any period of time at an offsite facility that is  
39 not a transfer facility.

40       (3)(A) Except as provided in subparagraph (B), the waste is held at a transfer  
41 facility and any one of the following apply:

1 (i) The transfer facility is located in an area zoned residential by the local planning  
2 authority.

3 (ii) The transfer facility commences initial operations on or after January 1, 2005,  
4 at a site located within 500 feet of a structure identified in paragraphs (1) to (5),  
5 inclusive, of subdivision (c) of Section 25227.

6 (iii) The hazardous waste is held for a period greater than six days at a transfer  
7 facility located in an area that is not zoned industrial or agricultural by the local  
8 planning authority.

9 (iv) The hazardous waste is held for a period greater than 10 days at a transfer  
10 facility located in an area zoned industrial or agricultural by the local planning  
11 authority.

12 (v) The hazardous waste is held for a period greater than six days at a transfer  
13 facility that commenced initial operations before January 1, 2005, is located in an  
14 area zoned agricultural by the local planning authority, and is located within 500  
15 feet of a structure identified in paragraphs (1) to (5), inclusive, of subdivision (c) of  
16 Section 25227.

17 (B)(i) Notwithstanding subparagraph (A), a transfer facility located in an area that  
18 is not zoned residential by the local planning authority is not a storage facility, if the  
19 only hazardous waste held at the transfer facility is hazardous waste that is generated  
20 as a result of an emergency release and that hazardous waste is collected and  
21 temporarily stored by emergency rescue personnel, as defined in Section 25501, or  
22 by a response action contractor upon the request of emergency rescue personnel or  
23 the response action contractor, and the holding of that hazardous waste is approved  
24 by the department.

25 (ii) For purposes of this subparagraph, “response action contractor” means any  
26 person who enters into a contract with the department to take removal or remedial  
27 action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2  
28 (commencing with Section 68000) of Division 45 in response to a release or  
29 threatened release, including any subcontractors of the response action contractor.

30 (4)(A) Except as provided in subparagraph (B), the hazardous waste is held onsite  
31 for any period of time, unless the hazardous waste is held in a container, tank, drip  
32 pad, or containment building pursuant to regulations adopted by the department.

33 (B) Notwithstanding subparagraph (A), a generator that accumulates hazardous  
34 waste generated and held onsite for 90 days or less for offsite transportation is not a  
35 storage facility if all of the following requirements are met:

36 (i) The waste is non-RCRA contaminated soil.

37 (ii) The hazardous waste being accumulated does not contain free liquids.

38 (iii) The hazardous waste is accumulated on an impermeable surface, such as high  
39 density polyethylene (HDPE) of at least 20 mils that is supported by a foundation,  
40 or high density polyethylene of at least 60 mils that is not supported by a foundation.

41 (iv) The generator provides controls for windblown dispersion and precipitation  
42 runoff and run-on and complies with any stormwater permit requirements issued by  
43 a regional water quality control board.

1 (v) The generator has the accumulation site inspected weekly and after storms to  
2 ensure that the controls for windblown dispersion and precipitation runoff and run-  
3 on are functioning properly.

4 (vi) The generator, after final offsite transportation, inspects the accumulation site  
5 for contamination and remediates as necessary.

6 (vii) The site is certified by a registered engineer for compliance with the  
7 standards specified in clauses (i) to (vi), inclusive.

8 (5) The hazardous waste is held at a transfer facility at any location for any period  
9 of time in a manner other than in a container.

10 (6) The hazardous waste is held at a transfer facility at any location for any period  
11 of time and handling occurs. For purposes of this paragraph, “handling” does not  
12 include the transfer of packaged or containerized hazardous waste from one vehicle  
13 to another.

14 (c) The time period for calculating the 90-day period for purposes of paragraph  
15 (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision  
16 (h), begins when the facility has accumulated 100 kilograms of hazardous waste or  
17 one kilogram of extremely hazardous waste or acutely hazardous waste. However,  
18 if the facility generates more than 100 kilograms of hazardous waste or one kilogram  
19 of extremely hazardous waste or acutely hazardous waste during any calendar  
20 month, the time period begins when any amount of hazardous waste first begins to  
21 accumulate in that month.

22 (d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous  
23 waste that accumulates waste onsite is not a storage facility if all of the following  
24 requirements are met:

25 (1) The generator accumulates a maximum of 55 gallons of hazardous waste, one  
26 quart of acutely hazardous waste, or one quart of extremely hazardous waste at an  
27 initial accumulation point that is at or near the area where the waste is generated and  
28 that is under the control of the operator of the process generating the waste.

29 (2) The generator accumulates the waste in containers other than tanks.

30 (3) The generator does not hold the hazardous waste onsite without a hazardous  
31 waste facilities permit or other grant of authorization for a period of time longer  
32 than the shorter of the following time periods:

33 (A) One year from the initial date of accumulation.

34 (B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date  
35 that the quantity limitation specified in paragraph (1) is reached.

36 (4) The generator labels any container used for the accumulation of hazardous  
37 waste with the initial date of accumulation and with the words “hazardous waste”  
38 or other words that identify the contents of the container.

39 (5) Within three days of reaching any applicable quantity limitation specified in  
40 paragraph (1), the generator labels the container holding the accumulated hazardous  
41 waste with the date the quantity limitation was reached and either transports the  
42 waste offsite or holds the waste onsite and complies with either the regulations  
43 adopted by the department establishing requirements for generators subject to the

1 time limit specified in paragraph (1) of subdivision (b) or the requirements specified  
2 in paragraph (1) of subdivision (h), whichever requirements are applicable.

3 (6) The generator complies with regulations adopted by the department pertaining  
4 to the use and management of containers and any other regulations adopted by the  
5 department to implement this subdivision.

6 (e)(1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste  
7 held for remediation waste staging shall not be considered to be held at a hazardous  
8 waste storage facility if the total accumulation period is one year or less from the  
9 date of the initial placing of hazardous waste by the generator at the staging site for  
10 onsite remediation, except that the department may grant one six-month extension,  
11 upon a showing of reasonable cause by the generator.

12 (2)(A) The generator shall submit a notification of plans to store and treat  
13 hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by  
14 certified mail, with return receipt requested, to the department and to one of the  
15 following:

16 (i) The CUPA, if the generator is under the jurisdiction of a CUPA.

17 (ii) If the generator is not under the jurisdiction of a CUPA, the notification shall  
18 be submitted to the agency authorized, pursuant to subdivision (f) of Section  
19 25404.3, to implement and enforce the requirements of this chapter listed in  
20 paragraph (1) of subdivision (c) of Section 25404.

21 (B) If, after the notification pursuant to subparagraph (A), or during the initial  
22 year or the six-month extension granted by the department, the generator determines  
23 that treatment cannot be accomplished for all, or part of, the hazardous waste  
24 accumulated in a remediation waste staging area, the generator shall immediately  
25 notify the department and the appropriate local agency, pursuant to subparagraph  
26 (A), that the treatment has been discontinued. The generator shall then handle and  
27 dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

28 (C) A generator shall not hold hazardous waste for remediation waste staging  
29 unless the generator can show, through laboratory testing, bench scale testing, or  
30 other documentation, that soil held for remediation waste staging is potentially  
31 treatable. Any fines and penalties imposed for a violation of this subparagraph may  
32 be imposed beginning with the 91st day that the hazardous waste was initially  
33 accumulated.

34 (3) Once an onsite treatment operation is completed on hazardous waste held  
35 pursuant to paragraph (1), the generator shall inspect the staging area for  
36 contamination and remediate as necessary.

37 (f) Notwithstanding any other provision of this chapter, remediation waste staging  
38 and the holding of non-RCRA contaminated soil for offsite transportation in  
39 accordance with paragraph (4) of subdivision (b) shall not be considered to be  
40 disposal or land disposal of hazardous waste.

41 (g) A generator who holds hazardous waste for remediation waste staging  
42 pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite  
43 for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain

1 records onsite that demonstrate compliance with this section related to storing  
2 hazardous waste for remediation waste staging or related to holding hazardous waste  
3 onsite for offsite transportation, as applicable. The records maintained pursuant to  
4 this subdivision shall be available for review by a public agency authorized pursuant  
5 to Section 25180 or 25185.

6 (h)(1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than  
7 1,000 kilograms of hazardous waste in any calendar month who accumulates  
8 hazardous waste onsite for 180 days or less, or 270 days or less if the generator  
9 transports the generator's own waste, or offers the generator's waste for  
10 transportation, over a distance of 200 miles or more, for offsite treatment, storage,  
11 or disposal, is not a storage facility if all of the following apply:

12 (A) The quantity of hazardous waste accumulated onsite never exceeds 6,000  
13 kilograms.

14 (B) The generator complies with the requirements of subdivisions (d), (e), and (f)  
15 of former Section 262.34 of Title 40 of the Code of Federal Regulations, as that  
16 section existed on January 1, 2015.

17 (C) The generator does not hold acutely hazardous waste or extremely hazardous  
18 waste in an amount greater than one kilogram for a time period longer than that  
19 specified in paragraph (1) of subdivision (b).

20 (2) A generator meeting the requirements of paragraph (1) who does not receive  
21 a copy of the manifest with the signature of the owner or operator of the facility to  
22 which the generator's waste is submitted or is unable to verify through the e-  
23 Manifest system that the facility has received the waste and signed the manifest,  
24 within 60 days from the date that the hazardous waste was accepted by the initial  
25 transporter, shall submit a report to the department along with a legible copy of the  
26 manifest indicating that the generator cannot confirm the delivery or receipt of the  
27 generator's waste with the owner or operator of the facility.

28 (i) The department may adopt regulations that set forth additional restrictions and  
29 enforceable management standards that protect human health and the environment  
30 and that apply to persons holding hazardous waste at a transfer facility. A regulation  
31 adopted pursuant to this subdivision shall be considered by the Office of  
32 Administrative Law to be necessary for the immediate preservation of the public  
33 peace, health and safety, and general welfare, and may be adopted as an emergency  
34 regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part  
35 1 of Division 3 of Title 2 of the Government Code.

36 **Comment.** Section 25123.3(a)(3)(B)(ii) is amended to update cross-references in accordance  
37 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
38 Division 20 of the Health and Safety Code.

39 **§ 25143.1 (amended). Exemption for specified wastes**

40 SEC. \_\_. Section 25143.1 of the Health and Safety Code is amended to read:

41 25143.1. (a) Geothermal waste resulting from drilling for geothermal resources is  
42 exempt from the requirements of this chapter because the disposal of these

1 geothermal wastes is regulated by the California regional water quality control  
2 boards.

3 (b)(1) Wastes from the extraction, beneficiation, and processing of ores and  
4 minerals that are not subject to regulation under the federal act are exempt from the  
5 requirements of this chapter, except the requirements of Article 9.5 (commencing  
6 with Section 25208), as provided in paragraph (2).

7 (2) The wastes subject to this subdivision are subject to Article 9.5 (commencing  
8 with Section 25208) and ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2  
9 (commencing with Section 68000) of Division 45 if the wastes would otherwise be  
10 classified as hazardous wastes pursuant to Section 25117 and the regulations  
11 adopted pursuant to Section 25141.

12 (3) For purposes of this subdivision, the following definitions shall apply:

13 (A) “Wastes from the extraction, beneficiation, and processing of ores and  
14 minerals” means any of the following:

15 (i) Soil, waste rock, overburden, and other solid, semisolid, or liquid natural  
16 materials that are removed, unearthed, or otherwise displaced as a result of  
17 excavating or recovering an ore or a mineral.

18 (ii) Residuals of ores or minerals after those ores or minerals have been removed,  
19 unearthed, or otherwise displaced from their natural sites and physically or  
20 chemically treated or otherwise managed in order to separate or concentrate the  
21 commercial product present in the ore or mineral, or processed to produce a final  
22 marketable product.

23 (iii) Spent brine solutions that are used to produce geothermal energy and that are  
24 transferred, via a closed piping system, to an adjacent facility for reclamation,  
25 beneficiation, or processing to recover minerals or other commercial substances, if  
26 the spent brine solutions, and any liquid residuals derived from the solutions, satisfy  
27 all of the following conditions:

28 (I) Are managed in accordance with the standards set forth in Section  
29 261.4(a)(17)(i) to (iii), inclusive, of Title 40 of the Code of Federal Regulations.

30 (II) Are returned after processing, via closed piping, and subsequently managed  
31 in accordance with the exemption provided in subdivision (c).

32 (III) Are not a solid or semisolid hazardous residuals. This subclause applies to  
33 materials that include, but are not limited to, filter cakes that are not covered by the  
34 exemption provided in subdivision (c).

35 (B) “Minerals” has the same meaning as defined in Section 2005 of the Public  
36 Resources Code.

37 (c)(1) Except as provided in paragraphs (3) and (4), geothermal waste, excluding  
38 filter cake, that is generated from the exploration, development, or production of  
39 geothermal energy and that does not result from drilling for geothermal resources,  
40 is exempt from the requirements of this chapter, if the geothermal waste meets either  
41 of the following requirements:

1 (A) The geothermal waste is contained within a piping system, nonearthen trench,  
2 or descaling area, or within related equipment, that is associated with the geothermal  
3 plant where the waste was generated.

4 (B) The geothermal waste is within the physical boundaries of a lined surface  
5 impoundment associated with the geothermal plant where the waste was generated.

6 (2) If geothermal waste that is exempted pursuant to subparagraph (B) of  
7 paragraph (1) is relocated to an elevated location inside a lined surface  
8 impoundment for dewatering, that waste shall be removed from the surface  
9 impoundment within 30 days of the relocation and while the waste still contains  
10 sufficient moisture to prevent wind dispersion, except for residuals that are  
11 impractical to remove. The geothermal waste shall be deemed to be generated at the  
12 time of removal and shall be properly managed as hazardous waste pursuant to the  
13 requirements of this chapter.

14 (3) A geothermal waste that is exempt pursuant to this subdivision ceases to be  
15 exempt from the requirements of this chapter, and shall be deemed to have been  
16 generated, when any of the following occur:

17 (A) It is no longer contained in one or more of the following, as described in  
18 paragraph (1):

19 (i) A piping system.

20 (ii) Nonearthen trench.

21 (iii) Descaling area.

22 (iv) Related equipment.

23 (v) Lined surface impoundment.

24 (B) It is left in a geothermal piping system, a related piping system, a nonearthen  
25 trench, a descaling area, or another piece of related equipment 18 months after the  
26 date the geothermal power plant last produced power, unless prior to that date the  
27 operator submits a written notification, as described in paragraph (4) to the  
28 department, and the department acknowledges the notification in writing.

29 (C) It is left in a lined surface impoundment and at any time poses an imminent  
30 potential threat to areas outside the surface impoundment due to windblown fugitive  
31 dusts.

32 (D) It remains in a unit no longer actively regulated by the regional water quality  
33 control board.

34 (E) It is left in a lined surface impoundment 18 months after the date the surface  
35 impoundment has last received waste, unless prior to that date the operator submits  
36 a written notification as described in paragraph (4) to the department, and the  
37 department acknowledges the notification in writing.

38 (4) The notification that is required to be submitted by an operator pursuant to  
39 subparagraphs (B) and (E) of paragraph (3) shall contain all of the following  
40 information:

41 (A) The name and address of the operator, and the address and physical location  
42 of the plant or surface impoundment in which the waste will be stored.

43 (B) Estimated dates on which the units will resume operation.

1 (C) A description of how the waste will be stored and managed, demonstrating to  
2 the department that the waste will not pose a significant hazard to human health and  
3 safety or the environment.

4 (5) This subdivision does not exempt hazardous waste that is either not directly  
5 associated with geothermal energy exploration, development, and production, or  
6 that is not exempted from the federal act pursuant to paragraph (5) of subdivision  
7 (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or both.  
8 Hazardous waste that is not exempted pursuant to this subdivision includes, but is  
9 not limited to, used oil generated from vehicles or the lubrication of machinery.

10 **Comment.** Section 25143.1(b)(2) is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 **§ 25143.2 (amended). Application of chapter to recyclable materials**

14 SEC. \_\_. Section 25143.2 of the Health and Safety Code is amended to read:

15 25143.2. (a) Recyclable materials are subject to this chapter and the regulations  
16 adopted by the department to implement this chapter that apply to hazardous wastes,  
17 unless the department issues a variance pursuant to Section 25143, or except as  
18 provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by  
19 the department pursuant to Sections 25150 and 25151.

20 (b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable  
21 material that is managed in accordance with Section 25143.9 and is or will be  
22 recycled by any of the following methods shall be excluded from classification as a  
23 waste:

24 (1) Used or reused as an ingredient in an industrial process to make a product if  
25 the material is not being reclaimed.

26 (2) Used or reused as a safe and effective substitute for commercial products if  
27 the material is not being reclaimed.

28 (3) Returned to the original process from which the material was generated,  
29 without first being reclaimed, if the material is returned as a substitute for raw  
30 material feedstock, and the process uses raw materials as principal feedstocks.

31 (c) Except as otherwise provided in subdivision (e), any recyclable material may  
32 be recycled at a facility that is not authorized by the department pursuant to the  
33 applicable hazardous waste facilities permit requirements of Article 9 (commencing  
34 with Section 25200) if either of the following requirements is met:

35 (1) The material is a petroleum refinery waste containing oil that is converted into  
36 petroleum coke at the same facility at which the waste was generated unless the  
37 resulting coke product would be identified as a hazardous waste under this chapter.

38 (2) The material meets all of the following conditions:

39 (A) The material is recycled and used at the same facility at which the material  
40 was generated.

1 (B) The material is recycled within the applicable generator accumulation time  
2 limits specified in Section 25123.3 and the regulations adopted by the department  
3 pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

4 (C) The material is managed in accordance with all applicable requirements for  
5 generators of hazardous wastes under this chapter and regulations adopted by the  
6 department.

7 (d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable  
8 material that meets the definition of a non-RCRA hazardous waste in Section  
9 25117.9, is managed in accordance with Section 25143.9, and meets or will meet  
10 any of the following requirements is excluded from classification as a waste:

11 (1) The material can be shown to be recycled and used at the site where the  
12 material was generated.

13 (2) The material qualifies as one or more of the following:

14 (A) The material is a product that has been processed from a hazardous waste, or  
15 has been handled, at a facility authorized by the department pursuant to the facility  
16 permit requirements of Article 9 (commencing with Section 25200) to process or  
17 handle the material, if the product meets both of the following conditions:

18 (i) The product does not contain constituents, other than those for which the  
19 material is being recycled, that render the material hazardous under regulations  
20 adopted pursuant to Sections 25140 and 25141.

21 (ii) The product is used, or distributed or sold for use, in a manner for which the  
22 product is commonly used.

23 (B) The material is a petroleum refinery waste containing oil that is converted into  
24 petroleum coke at the same facility at which the waste was generated, unless the  
25 resulting coke product would be identified as a hazardous waste under this chapter.

26 (C) The material is oily waste, used oil, or spent nonhalogenated solvent that is  
27 managed by the owner or operator of a refinery that is processing primarily crude  
28 oil and is not subject to permit requirements for the recycling of used oil, of a public  
29 utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same  
30 corporate parent of the refinery or public utility, and meets all of the following  
31 requirements:

32 (i) The material is either burned in an industrial boiler, an industrial furnace, an  
33 incinerator, or a utility boiler that is in compliance with all applicable federal and  
34 state laws, or is recombined with normal process streams to produce a fuel or other  
35 refined petroleum product.

36 (ii) The material is managed at the site where it was generated; managed at another  
37 site owned or operated by the generator, a corporate subsidiary of the generator, a  
38 subsidiary of the same entity of which the generator is a subsidiary, or the corporate  
39 parent of the generator; or, if the material is generated in the course of oil or gas  
40 exploration or production, managed by an unrelated refinery receiving the waste  
41 through a common pipeline.

42 (iii) The material does not contain constituents, other than those for which the  
43 material is being recycled, that render the material hazardous under regulations

1 adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing  
2 material or recovered oil that is managed in accordance with subdivisions (a) and  
3 (c) of Section 25144 or unless the material is used oil removed from equipment,  
4 vehicles, or engines used primarily at the refinery where it is to be used to produce  
5 fuels or other refined petroleum products and the used oil is managed in accordance  
6 with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion  
7 into the refining process.

8 (D) The material is a fuel that is transferred to, and processed into, a fuel or other  
9 refined petroleum product at a petroleum refinery, as defined in paragraph (4) of  
10 subdivision (a) of Section 25144, and meets one of the following requirements:

11 (i) The fuel has been removed from a fuel tank and is contaminated with water or  
12 nonhazardous debris, of not more than 2 percent by weight, including, but not  
13 limited to, rust or sand.

14 (ii) The fuel has been unintentionally mixed with an unused petroleum product.

15 (3) The material is transported between locations operated by the same person  
16 who generated the material, if the material is recycled at the last location operated  
17 by that person and all of the conditions of clauses (i) to (vi), inclusive, of  
18 subparagraph (A) of paragraph (4) are met. If requested by the department or by any  
19 official authorized to enforce this section pursuant to subdivision (a) of Section  
20 25180, a person handling material subject to this paragraph, within 15 days from the  
21 date of receipt of the request, shall supply documentation to show that the  
22 requirements of this paragraph have been satisfied.

23 (4)(A) The material is transferred between locations operated by the same person  
24 who generated the material, if the material is to be recycled at an authorized offsite  
25 hazardous waste facility and if all of the following conditions are met:

26 (i) The material is transferred by employees of that person in vehicles under the  
27 control of that person or by a registered hazardous waste hauler under contract to  
28 that person.

29 (ii) The material is not handled at any interim location.

30 (iii) The material is not held at any publicly accessible interim location for more  
31 than four hours unless required by other provisions of law.

32 (iv) The material is managed in compliance with this chapter and the regulations  
33 adopted pursuant to this chapter prior to the initial transportation of the material and  
34 after the receipt of the material at the last location operated by that person. Upon  
35 receipt of the material at the last location operated by that person, the material shall  
36 be deemed to have been generated at that location.

37 (v) All of the following information is maintained in an operating log at the last  
38 location operated by that person and kept for at least three years after receipt of the  
39 material at that location:

40 (I) The name and address of each generator location contributing material to each  
41 shipment received.

42 (II) The quantity and type of material contributed by each generator to each  
43 shipment of material.

1 (III) The destination and intended disposition of all material shipped offsite or  
2 received.

3 (IV) The date of each shipment received or sent offsite.

4 (vi) If requested by the department, or by any law enforcement official, a person  
5 handling material subject to this paragraph, within 15 days from the date of receipt  
6 of the request, shall supply documentation to show that the requirements of this  
7 paragraph have been satisfied.

8 (B) For purposes of paragraph (3) and subparagraph (A) of this paragraph,  
9 “person” also includes corporate subsidiary, corporate parent, or subsidiary of the  
10 same corporate parent.

11 (C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the  
12 same corporate parent, and that manage recyclable materials under paragraph (3) or  
13 subparagraph (A) of this paragraph, are jointly and severally liable for any activities  
14 excluded from regulation pursuant to this section.

15 (5) The material is used or reused as an ingredient in an industrial process to make  
16 a product if the material meets all of the following requirements:

17 (A) The material is not a wastewater that meets all of the following criteria:

18 (i) The wastewater is a non-RCRA hazardous waste.

19 (ii) The wastewater contains more than 75 parts per million of total petroleum  
20 hydrocarbons, as determined by use of United States Environmental Protection  
21 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable  
22 Material.

23 (iii) The wastewater has been transported offsite to a facility, that is not a publicly  
24 owned treatment works, a facility owned by the generator, or a corporate subsidiary,  
25 corporate parent, or a subsidiary of the same corporate parent of the generator.

26 (B) Any discharges to air from the treatment of the material by the procedures  
27 specified in subparagraph (C) do not contain constituents that are hazardous wastes  
28 pursuant to the regulations of the department and are in compliance with applicable  
29 air pollution control laws.

30 (C) The material is not being treated except by one or more of the following  
31 procedures:

32 (i) Filtering.

33 (ii) Screening.

34 (iii) Sorting.

35 (iv) Sieving.

36 (v) Grinding.

37 (vi) Physical or gravity separation without the addition of external heat or any  
38 chemicals.

39 (vii) pH adjustment.

40 (viii) Viscosity adjustment.

41 (6) The material is used or reused as a safe and effective substitute for commercial  
42 products, if the material meets all of the following requirements:

43 (A) The material is not a wastewater that meets all of the following criteria:

- 1 (i) The wastewater is a non-RCRA hazardous waste.
- 2 (ii) The wastewater contains more than 75 parts per million of total petroleum  
3 hydrocarbons, as determined by use of United States Environmental Protection  
4 Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable  
5 Material.
- 6 (iii) The wastewater has been transported offsite to a facility that is not a publicly  
7 owned treatment works, or a facility owned by the generator, or a corporate  
8 subsidiary, corporate parent, or a subsidiary of the same corporate parent of the  
9 generator.
- 10 (B) Any discharges to air from the treatment of the material by the procedures  
11 specified in subparagraph (C) do not contain constituents that are hazardous wastes  
12 pursuant to the regulations of the department and the discharges are in compliance  
13 with applicable air pollution control laws.
- 14 (C) The material is not being treated, except by one or more of the following  
15 procedures:
- 16 (i) Filtering.
- 17 (ii) Screening.
- 18 (iii) Sorting.
- 19 (iv) Sieving.
- 20 (v) Grinding.
- 21 (vi) Physical or gravity separation without the addition of external heat or any  
22 chemicals.
- 23 (vii) pH adjustment.
- 24 (viii) Viscosity adjustment.
- 25 (7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound  
26 or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is  
27 being reused or recycled, and is used in heat transfer equipment, including, but not  
28 limited to, mobile air-conditioning systems, mobile refrigeration, and commercial  
29 and industrial air-conditioning and refrigeration systems, used in fire extinguishing  
30 products, or contained within foam products.
- 31 (e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable  
32 materials are hazardous wastes and subject to full regulation under this chapter, even  
33 if the recycling involves use, reuse, or return to the original process as described in  
34 subdivision (b), and even if the recycling involves activities or materials described  
35 in subdivisions (c) and (d):
- 36 (1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2,  
37 used in a manner constituting disposal, or used to produce products that are applied  
38 to the land, including, but not limited to, materials used to produce a fertilizer, soil  
39 amendment, agricultural mineral, or an auxiliary soil and plant substance.
- 40 (2) Materials that are a non-RCRA hazardous waste, as defined in Section  
41 25117.9, and used in a manner constituting disposal or used to produce products  
42 that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or

1 an auxiliary soil and plant substance. The department may adopt regulations to  
2 exclude materials from regulation pursuant to this paragraph.

3 (3) Materials burned for energy recovery, used to produce a fuel, or contained in  
4 fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded  
5 under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

6 (4) Materials accumulated speculatively.

7 (5) Materials determined to be inherently wastelike pursuant to regulations  
8 adopted by the department.

9 (6) Used or spent etchants, stripping solutions, and plating solutions that are  
10 transported to an offsite facility operated by a person other than the generator and  
11 either of the following applies:

12 (A) The etchants or solutions are no longer fit for their originally purchased or  
13 manufactured purpose.

14 (B) If the etchants or solutions are reused, the generator and the user cannot  
15 document that they are used for their originally purchased or manufactured purpose  
16 without prior treatment.

17 (7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the  
18 following applies:

19 (A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of  
20 subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1,  
21 or Section 25250.3, and is managed in accordance with the applicable requirements  
22 of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal  
23 Regulations.

24 (B) The used oil is used or reused on the site where it was generated or is excluded  
25 under paragraph (3) of subdivision (d), is managed in accordance with the applicable  
26 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code  
27 of Federal Regulations, and is not any of the following:

28 (i) Used in a manner constituting disposal or used to produce a product that is  
29 applied to land.

30 (ii) Burned for energy recovery or used to produce a fuel unless the used oil is  
31 excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

32 (iii) Accumulated speculatively.

33 (iv) Determined to be inherently wastelike pursuant to regulations adopted by the  
34 department.

35 (f)(1) Any person who manages a recyclable material under a claim that the  
36 material qualifies for exclusion or exemption pursuant to this section shall provide,  
37 upon request, to the department, the California Environmental Protection Agency,  
38 or any local agency or official authorized to bring an action as provided in Section  
39 25180, all of the following information:

40 (A) The name, street and mailing address, and telephone number of the owner or  
41 operator of any facility that manages the material.

1 (B) Any other information related to the management by that person of the  
2 material requested by the department, the California Environmental Protection  
3 Agency, or the authorized local agency or official.

4 (2) Any person claiming an exclusion or an exemption pursuant to this section  
5 shall maintain adequate records to demonstrate to the satisfaction of the requesting  
6 agency or official that there is a known market or disposition for the material, and  
7 that the requirements of any exemption or exclusion pursuant to this section are met.

8 (3) For purposes of determining that the conditions for exclusion from  
9 classification as a waste pursuant to this section are met, any person, facility, site,  
10 or vehicle engaged in the management of a material under a claim that the material  
11 is excluded from classification as a waste pursuant to this section is subject to  
12 Section 25185.

13 (g) For purposes of ~~Chapter 6.8 (commencing with Section 25300), Part 2~~  
14 (commencing with Section 68000) of Division 45, recyclable materials excluded  
15 from classification as a waste pursuant to this section are not excluded from the  
16 definition of hazardous substances in ~~subdivision (g) of Section 25316. paragraph~~  
17 (7) of subdivision (a) of Section 68075.

18 (h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely  
19 because the used oil is a RCRA hazardous waste may be managed pursuant to  
20 subdivision (d) if the used oil is also managed in accordance with the applicable  
21 requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code  
22 of Federal Regulations.

23 **Comment.** Section 25143.2(g) is amended to update cross-references in accordance with the  
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
25 the Health and Safety Code.

26 **§ 25152.5 (amended). Public records**

27 SEC. \_\_. Section 25152.5 of the Health and Safety Code is amended to read:

28 25152.5. (a) For purposes of this section, the following definitions apply:

29 (1) “Unusual circumstances” means only the following:

30 (A) The need to search for and collect the requested records from field facilities  
31 or other establishments that are separate from the office processing the request.

32 (B) The need to search for, collect, and appropriately examine a voluminous  
33 amount of separate and distinct records which are demanded in a single request.

34 (C) The need to consult with another agency having a substantial interest in the  
35 determination of whether to respond to the request.

36 (2) “Public records” means any public record, as defined in Section 6252 of the  
37 Government Code, of the department relating to this chapter, Chapter 6.7  
38 (commencing with Section 25280), or ~~Chapter 6.8 (commencing with Section~~  
39 25300). Part 2 (commencing with Section 68000) of Division 45. “Public records”  
40 includes unprinted information relating to this chapter, Chapter 6.7 (commencing  
41 with Section 25280), or ~~Chapter 6.8 (commencing with Section 25300) Part 2~~  
42 (commencing with Section 68000) of Division 45 which is stored in data or word

1 processing equipment either owned by an employee and located on premises under  
2 control of the department or owned by the department.

3 (b) Notwithstanding any other provision of law, the department shall not limit the  
4 hours during the normal working day or limit the number of working days during  
5 which public records are open for inspection.

6 (c)(1) Notwithstanding any other provision of law, the department shall make  
7 public records which are not exempt from disclosure by law, including Chapter 3.5  
8 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code,  
9 promptly available to any person, within the time limits specified in Section 6256  
10 of the Government Code, upon payment of a fee established by the department to  
11 cover the direct costs of duplication, as specified in subdivision (f). In addition, a  
12 person requesting copies by mail may be required to pay the mailing costs.

13 (2) If any portion of a record is exempt from disclosure, that part which is not  
14 exempt shall be provided as prescribed in this section.

15 (d) Any person may request access to, or copies of, public records of the  
16 department in person or by mail. A request shall reasonably describe an identifiable  
17 record or information to be produced therefrom.

18 (e) If the department determines that an unusual circumstance exists, the  
19 department shall comply with the notification procedures and the time limits  
20 specified in Section 6256.1 of the Government Code.

21 (f) The department shall, upon request, provide any person with the facts upon  
22 which it bases its determination of the direct costs of copying for each page which  
23 is requested. The department shall not impose a minimum fee for a copy of a public  
24 record which is greater than its direct per page copying costs and the department  
25 shall not impose limits on the types or amounts of public records which the  
26 department will provide to persons requesting these records, upon payment of any  
27 fees covering the direct costs of duplication by the department.

28 (g) This section does not authorize the department, or any employee of the  
29 department, to delay access for purposes of inspecting or obtaining copies of public  
30 records, unless there are unusual circumstances.

31 (h) Any denial of a request for records shall set forth in writing the reasons for the  
32 denial and the names and titles or positions of each person responsible for the denial.  
33 This written response shall be provided to the requester within five working days of  
34 the denial.

35 **Comment.** Section 25152.5(a)(2) is amended to update cross-references in accordance with the  
36 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
37 the Health and Safety Code.

38 This section is also amended to add paragraph labels.

39 **§ 25159.22 (amended). Construction of article**

40 SEC. \_\_. Section 25159.22 of the Health and Safety Code is amended to read:

41 25159.22. This article shall not be construed to limit or abridge the powers and  
42 duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8~~

1 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 68000) of  
2 Division 45 or to the state board or any regional board pursuant to Division 7  
3 (commencing with Section 13000) of the Water Code, to the Division of Oil and  
4 Gas pursuant to Division 3 (commencing with Section 3000) of the Public  
5 Resources Code, or the authority of any city, county, or district to act pursuant to  
6 the local agency's ordinances or regulations.

7 **Comment.** Section 25159.22 is amended to update cross-references in accordance with the  
8 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
9 the Health and Safety Code.

10 **§ 25173.6 (amended). Toxic Substances Control Account**

11 SEC. \_\_. Section 25173.6 of the Health and Safety Code is amended to read:

12 25173.6. (a) There is in the General Fund the Toxic Substances Control Account,  
13 which shall be administered by the director. In addition to any other money that may  
14 be appropriated by the Legislature to the Toxic Substances Control Account, all of  
15 the following shall be deposited in the account:

16 (1) The fees collected pursuant to Section 25205.6.

17 (2) The fees collected pursuant to Section 25187.2, to the extent that those fees  
18 are for oversight of a removal or remedial action taken under ~~Chapter 6.8~~  
19 ~~(commencing with Section 25300)~~ or Chapter 6.86 (commencing with Section  
20 25396), or Part 2 (commencing with Section 68000) of Division 45.

21 (3) Fines or penalties collected pursuant to this chapter, ~~Chapter 6.8 (commencing~~  
22 ~~with Section 25300)~~ or Chapter 6.86 (commencing with Section 25396), or Part 2  
23 (commencing with Section 68000) of Division 45, except as directed otherwise by  
24 Section 25192.

25 (4) Interest earned upon money deposited in the Toxic Substances Control  
26 Account.

27 (5) All money recovered pursuant to Section ~~25360~~, 69650, except any amount  
28 recovered on or before June 30, 2006, that was paid from the Hazardous Substance  
29 Cleanup Fund.

30 (6) All money recovered pursuant to ~~Section 25380~~. Article 7 (commencing with  
31 Section 71030) of Chapter 12 of Part 2 of Division 45.

32 (7) All penalties recovered pursuant to Section 25214.3, except as provided by  
33 Section 25192.

34 (8) All penalties recovered pursuant to Section 25214.22.1, except as provided by  
35 Section 25192.

36 (9) All penalties recovered pursuant to Section 25215.82, except as provided by  
37 Section 25192.

38 (10) Reimbursements for funds expended from the Toxic Substances Control  
39 Account for services provided by the department, including, but not limited to,  
40 reimbursements required pursuant to Sections 25201.9 and ~~25343~~. 69105.

1 (11) Money received from the federal government pursuant to the federal  
2 Comprehensive Environmental Response, Compensation, and Liability Act of  
3 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

4 (12) Money received from responsible parties for remedial action or removal at a  
5 specific site, except as otherwise provided by law.

6 (b) The funds deposited in the Toxic Substances Control Account may be  
7 appropriated to the department for the following purposes:

8 (1) The administration and implementation of the following:

9 (A) ~~Chapter 6.8 (commencing with Section 25300), Part 2 (commencing with~~  
10 Section 68000) of Division 45, except that funds shall not be expended from the  
11 Toxic Substances Control Account for purposes of ~~Section 25354.5. Article 16~~  
12 (commencing with Section 69350) of Chapter 5 of Part 2 of Division 45.

13 (B) Chapter 6.86 (commencing with Section 25396).

14 (C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the  
15 Public Utilities Code, to the extent the department has been delegated  
16 responsibilities by the Secretary for Environmental Protection for implementing that  
17 article.

18 (D) Activities of the department related to pollution prevention and technology  
19 development, authorized pursuant to this chapter.

20 (2) The administration of the following units, and successor organizations of those  
21 units, within the department, and the implementation of programs administered by  
22 those units or successor organizations:

23 (A) The Human and Ecological Risk Office.

24 (B) The Environmental Chemistry Laboratory.

25 (C) The Office of Pollution Prevention and Technology Development.

26 (3) For allocation to the Office of Environmental Health Hazard Assessment,  
27 pursuant to an interagency agreement, to assist the department as needed in  
28 administering the programs described in subparagraphs (A) and (B) of paragraph  
29 (1).

30 (4) For allocation to the California Department of Tax and Fee Administration to  
31 pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation  
32 Code.

33 (5) For the state share mandated pursuant to paragraph (3) of subsection (c) of  
34 Section 104 of the federal Comprehensive Environmental Response, Compensation,  
35 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

36 (6) For the purchase by the state, or by a local agency with the prior approval of  
37 the director, of hazardous substance response equipment and other preparations for  
38 response to a release of hazardous substances. However, all equipment shall be  
39 purchased in a cost-effective manner after consideration of the adequacy of existing  
40 equipment owned by the state or the local agency, and the availability of equipment  
41 owned by private contractors.

42 (7) For payment of all costs of removal and remedial action incurred by the state,  
43 or by a local agency with the approval of the director, in response to a release or

1 threatened release of a hazardous substance, to the extent the costs are not  
2 reimbursed by the federal Comprehensive Environmental Response, Compensation,  
3 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

4 (8) For payment of all costs of actions taken pursuant to ~~subdivision (b) of Section~~  
5 ~~25358.3, Section 68650~~, to the extent that these costs are not paid by the federal  
6 Comprehensive Environmental Response, Compensation, and Liability Act of  
7 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

8 (9) For all costs incurred by the department in cooperation with the Agency for  
9 Toxic Substances and Disease Registry established pursuant to subsection (i) of  
10 Section 104 of the federal Comprehensive Environmental Response, Compensation,  
11 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of  
12 health effects studies undertaken regarding specific sites or specific substances at  
13 specific sites. Funds appropriated for this purpose shall not exceed five hundred  
14 thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not  
15 duplicate reasonably available federal actions and studies.

16 (10) For repayment of the principal of, and interest on, bonds sold pursuant to  
17 ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8. Article 5~~  
18 ~~(commencing with Section 68280) of Chapter 2 of Part 2 of Division 45.~~

19 (11) Direct site remediation costs.

20 (12) For the department's expenses for staff to perform oversight of  
21 investigations, characterizations, removals, remediations, or long-term operation  
22 and maintenance.

23 (13) For the administration and collection of the fees imposed pursuant to Section  
24 25205.6.

25 (14) For allocation to the office of the Attorney General, pursuant to an  
26 interagency agreement or similar mechanism, for the support of the Toxic Substance  
27 Enforcement Program in the office of the Attorney General, in carrying out the  
28 purposes of ~~Chapter 6.8 (commencing with Section 25300) and Chapter 6.86~~  
29 ~~(commencing with Section 25396); and Part 2 (commencing with Section 68000) of~~  
30 ~~Division 45.~~

31 (15) For funding the California Environmental Contaminant Biomonitoring  
32 Program established pursuant to Chapter 8 (commencing with Section 105440) of  
33 Part 5 of Division 103.

34 (16) As provided in Sections 25214.3 and 25215.7 and, with regard to penalties  
35 recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4  
36 (commencing with Section 25214.11).

37 (c) The funds deposited in the Toxic Substances Control Account may be  
38 appropriated by the Legislature to the Office of Environmental Health Hazard  
39 Assessment and the State Department of Public Health for the purposes of carrying  
40 out their duties pursuant to the California Environmental Contaminant  
41 Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of  
42 Division 103).

1 (d) The director shall expend federal funds in the Toxic Substances Control  
2 Account consistent with the requirements specified in Section 114 of the federal  
3 Comprehensive Environmental Response, Compensation, and Liability Act of  
4 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for  
5 the purposes for which they were provided to the state.

6 (e) Money in the Toxic Substances Control Account shall not be expended to  
7 conduct removal or remedial actions if a significant portion of the hazardous  
8 substances to be removed or remedied originated from a source outside the state.

9 (f) The Director of Finance, upon request of the director, may make a loan from  
10 the General Fund to the Toxic Substances Control Account to meet cash needs. The  
11 loan shall be subject to the repayment provisions of Section 16351 of the  
12 Government Code and the interest provisions of Section 16314 of the Government  
13 Code.

14 (g) The Toxic Substances Control Account established pursuant to subdivision (a)  
15 is the successor fund of all of the following:

16 (1) The Hazardous Substance Account established pursuant to Section 25330, as  
17 that section read on June 30, 2006.

18 (2) The Hazardous Substance Clearing Account established pursuant to Section  
19 25334, as that section read on June 30, 2006.

20 (3) The Hazardous Substance Cleanup Fund established pursuant to Section  
21 25385.3, as that section read on June 30, 2006.

22 (4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as  
23 that section read on June 30, 2006.

24 (h) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and  
25 funds listed in subdivision (g), shall be transferred to, and become a part of, the  
26 Toxic Substances Control Account, as provided by Section 16346 of the  
27 Government Code. All existing appropriations from these accounts, to the extent  
28 encumbered, shall continue to be available for the same purposes and periods from  
29 the Toxic Substances Control Account.

30 (i) Notwithstanding Section 10231.5 of the Government Code, the department, on  
31 or before February 1 of each year, shall report to the Governor and the Legislature  
32 on the prior fiscal year's expenditure of funds within the Toxic Substances Control  
33 Account for the purposes specified in subdivision (b).

34 **Comment.** Section 25173.6 is amended throughout to update cross-references in accordance  
35 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
36 Division 20 of the Health and Safety Code.

37 **Note.** Section 25173.6(b)(1)(A) cross-refers to Section 25354.5. Section 25354.5 is proposed for  
38 recodification as multiple provisions. With the exception of one provision governing the Illegal  
39 Drug Lab Cleanup Account (proposed Section 68370), all of the provisions of Section 25354.5 are  
40 proposed for recodification in Article 16 (commencing with Section 69350) of Chapter 5 of Part 2  
41 of Division 45. The cross-reference to Section 25354.5 was updated to refer only to Article 16, as  
42 the rules governing funding and expenditure of the Illegal Drug Lab Cleanup Account do not appear  
43 to be relevant to the purpose of this cross-reference. **Absent comment, this proposed cross-**  
44 **reference update will be presumed correct.**

1 **§ 25173.7 (amended). Appropriation of funds in Toxic Substances Control Account**

2 SEC. \_\_. Section 25173.7 of the Health and Safety Code is amended to read:

3 25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic  
4 Substances Control Account shall be appropriated in the annual Budget Act each  
5 year in the following manner:

6 (1) An amount sufficient to pay for the estimated costs identified by the  
7 department in the report submitted pursuant to subdivision (c) to the Site  
8 Remediation Account in the General Fund for direct site remediation costs, as  
9 defined in ~~Section 25337~~. Section 68260.

10 (2) Not less than ten million seven hundred fifty thousand dollars (\$10,750,000)  
11 to the Site Remediation Account in the General Fund for direct site remediation  
12 costs, as defined in ~~Section 25337~~. Section 68260.

13 (3) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site  
14 Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)  
15 of former Section 25399.1, for purposes of paying the orphan share of response costs  
16 pursuant to former Chapter 6.85 (commencing with Section 25396).

17 (4) An amount that does not exceed the costs incurred by the State Board of  
18 Equalization, a private party, or other public agency, to administer and collect the  
19 fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and  
20 deposited into the Toxic Substances Control Account, for the purpose of  
21 reimbursing the State Board of Equalization, public agency, or private party, for  
22 those costs.

23 (5) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of  
24 establishing and implementing a program pursuant to Sections 25244.15.1,  
25 25244.17.1, 25244.17.2, and 25244.22 to encourage hazardous waste generators to  
26 implement pollution prevention measures.

27 (6) Funds not appropriated as specified in paragraphs (1) to (5), inclusive, may be  
28 appropriated for any of the purposes specified in subdivision (b) of Section 25173.6,  
29 except the purposes specified in subparagraph (C) of paragraph (1) of, and  
30 paragraph (13) of, subdivision (b) of Section 25173.6.

31 (b)(1) The amounts specified in paragraphs (2) to (5), inclusive, of subdivision (a)  
32 shall be adjusted annually to reflect increases or decreases in the cost of living  
33 during the prior fiscal year, as measured by the Consumer Price Index issued by the  
34 Department of Industrial Relations or by a successor agency.

35 (2) Notwithstanding paragraph (1), the department may, upon the approval of the  
36 Legislature in a statute or the annual Budget Act, take either of the following  
37 actions:

38 (A) Reduce the amounts specified in paragraphs (1) to (5), inclusive, of  
39 subdivision (a), if there are insufficient funds in the Toxic Substances Control  
40 Account.

41 (B) Suspend the transfer specified in paragraph (3) of subdivision (a), if there are  
42 no orphan shares pending payment pursuant to former Chapter 6.85 (commencing  
43 with Section 25396).

1 (c) The department shall submit to the Legislature with the Governor’s Budget  
2 each year a report that includes an estimate of the funding needed to fund direct site  
3 remediation costs at state orphan sites and meet the state’s obligation to pay for  
4 direct site remediation costs at federal Superfund orphan sites pursuant to paragraph  
5 (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental  
6 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
7 9604(c)(3)). The estimate shall include projected costs for the current budget year  
8 and the two following budget years, including, but not limited to, the state’s 10-  
9 percent funding obligation for remedial actions at federal Superfund orphan sites,  
10 the state’s 100-percent funding obligation for ongoing operation and maintenance  
11 at federal Superfund orphan sites, and ongoing operation and maintenance costs at  
12 state orphan sites.

13 **Comment.** Section 25173.7 is amended to update cross-references in accordance with the  
14 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
15 the Health and Safety Code.

16 **§ 25174 (amended). Hazardous Waste Control Account**

17 SEC. \_\_\_. Section 25174 of the Health and Safety Code is amended to read:

18 25174. (a) There is in the General Fund the Hazardous Waste Control Account,  
19 which shall be administered by the director. In addition to any other money that may  
20 be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the  
21 following amounts shall be deposited in the account:

22 (1) The fees collected pursuant to Sections 25174.1, 25205.2, 25205.5, 25205.15,  
23 and 25205.16.

24 (2) The fees collected pursuant to Section 25187.2, to the extent that those fees  
25 are for the oversight of corrective action taken under this chapter.

26 (3) Any interest earned upon the money deposited in the Hazardous Waste Control  
27 Account.

28 (4) Any money received from the federal government pursuant to the federal act.

29 (5) Any reimbursements for funds expended from the Hazardous Waste Control  
30 Account for services provided by the department pursuant to this chapter, including,  
31 but not limited to, the reimbursements required pursuant to Sections 25201.9 and  
32 25205.7.

33 (b) The funds deposited in the Hazardous Waste Control Account may be  
34 appropriated by the Legislature, for expenditure as follows:

35 (1) To the department for the administration and implementation of this chapter.

36 (2) To the department for allocation to the State Board of Equalization to pay  
37 refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and  
38 Taxation Code and for the administration and collection of the fees imposed  
39 pursuant to Article 9.1 (commencing with Section 25205.1) that are deposited into  
40 the Hazardous Waste Control Account.

41 (3) To the department for the costs of performance or review of analyses of past,  
42 present, or potential environmental public health effects related to toxic substances,

1 including extremely hazardous waste, as defined in Section 25115, and hazardous  
2 waste, as defined in Section 25117.

3 (4)(A) To the department for allocation to the office of the Attorney General for  
4 the support of the Toxic Substance Enforcement Program in the office of the  
5 Attorney General, in carrying out the purposes of this chapter.

6 (B) On or before October 1 of each year, the Attorney General shall report to the  
7 Legislature on the expenditure of any funds allocated to the office of the Attorney  
8 General for the preceding fiscal year pursuant to this paragraph and paragraph (14)  
9 of subdivision (b) of Section 25173.6. The report shall include all of the following:

10 (i) A description of cases resolved by the office of the Attorney General through  
11 settlement or court order, including the monetary benefit to the department and the  
12 state.

13 (ii) A description of injunctions or other court orders benefiting the people of the  
14 state.

15 (iii) A description of any cases in which the Attorney General's Toxic Substance  
16 Enforcement Program is representing the department or the state against claims by  
17 defendants or responsible parties.

18 (iv) A description of other pending litigation handled by the Attorney General's  
19 Toxic Substance Enforcement Program.

20 (C) Nothing in subparagraph (C) shall require the Attorney General to report on  
21 any confidential or investigatory matter.

22 (5) To the department for administration and implementation of Chapter 6.11  
23 (commencing with Section 25404).

24 (c)(1) Expenditures from the Hazardous Waste Control Account for support of  
25 state agencies other than the department shall, upon appropriation by the Legislature  
26 to the department, be subject to an interagency agreement or similar mechanism  
27 between the department and the state agency receiving the support.

28 (2) The department shall, at the time of the release of the annual Governor's  
29 Budget, describe the budgetary amounts proposed to be allocated to the State Board  
30 of Equalization, as specified in paragraph (2) of subdivision (b) and in paragraph  
31 (3) of subdivision (b) of Section 25173.6, for the upcoming fiscal year.

32 (3) It is the intent of the Legislature that moneys appropriated in the annual Budget  
33 Act each year for the purpose of reimbursing the State Board of Equalization, a  
34 private party, or other public agency, for the administration and collection of the  
35 fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and  
36 deposited in the Hazardous Waste Control Account, shall not exceed the costs  
37 incurred by the State Board of Equalization, the private party, or other public  
38 agency, for the administration and collection of those fees.

39 (d) With respect to expenditures for the purposes of paragraphs (1) and (3) of  
40 subdivision (b) and paragraphs (1) and (2) of subdivision (b) of Section 25173.6,  
41 the department shall, at the time of the release of the annual Governor's Budget,  
42 also make available the budgetary amounts and allocations of staff resources of the  
43 department proposed for the following activities:

1 (1) The department shall identify, by permit type, the projected allocations of  
2 budgets and staff resources for hazardous waste facilities permits, including  
3 standardized permits, closure plans, and postclosure permits.

4 (2) The department shall identify, with regard to surveillance and enforcement  
5 activities, the projected allocations of budgets and staff resources for the following  
6 types of regulated facilities and activities:

7 (A) Hazardous waste facilities operating under a permit or grant of interim status  
8 issued by the department, and generator activities conducted at those facilities. This  
9 information shall be reported by permit type.

10 (B) Transporters.

11 (C) Response to complaints.

12 (3) The department shall identify the projected allocations of budgets and staff  
13 resources for both of the following activities:

14 (A) The registration of hazardous waste transporters.

15 (B) The operation and maintenance of the hazardous waste manifest system.

16 (4) The department shall identify, with regard to site mitigation and corrective  
17 action, the projected allocations of budgets and staff resources for the oversight and  
18 implementation of the following activities:

19 (A) Investigations and removal and remedial actions at military bases.

20 (B) Voluntary investigations and removal and remedial actions.

21 (C) State match and operation and maintenance costs, by site, at joint state and  
22 federally funded National Priority List Sites.

23 (D) Investigation, removal and remedial actions, and operation and maintenance  
24 at the Stringfellow Hazardous Waste Site.

25 (E) Investigation, removal and remedial actions, and operation and maintenance  
26 at the Casmalia Hazardous Waste Site.

27 (F) Investigations and removal and remedial actions at nonmilitary, responsible  
28 party lead National Priority List Sites.

29 (G) Preremedial activities under the federal Comprehensive Environmental  
30 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

31 (H) Investigations, removal and remedial actions, and operation and maintenance  
32 at state-only orphan sites.

33 (I) Investigations and removal and remedial actions at nonmilitary, non-National  
34 Priority List responsible party lead sites.

35 (J) Investigations, removal and remedial actions, and operation and maintenance  
36 at Expedited Remedial Action Program sites pursuant to former Chapter 6.85  
37 (commencing with Section 25396).

38 (K) Corrective actions at hazardous waste facilities.

39 (5) The department shall identify, with regard to the regulation of hazardous  
40 waste, the projected allocation of budgets and staff resources for the following  
41 activities:

42 (A) Determinations pertaining to the classification of hazardous wastes.

43 (B) Determinations for variances made pursuant to Section 25143.

1 (C) Other determinations and responses to public inquiries made by the  
2 department regarding the regulation of hazardous waste and hazardous substances.

3 (6) The department shall identify projected allocations of budgets and staff  
4 resources needed to do all of the following:

5 (A) Identify, remove, store, and dispose of, suspected hazardous substances or  
6 hazardous materials associated with the investigation of clandestine drug  
7 laboratories.

8 (B) Respond to emergencies pursuant to ~~Section 25354~~. Section 68875.

9 (C) Create, support, maintain, and implement the railroad accident prevention and  
10 immediate deployment plan developed pursuant to Section 7718 of the Public  
11 Utilities Code.

12 (7) The department shall identify projected allocations of budgets and staff  
13 resources for the administration and implementation of the unified hazardous waste  
14 and hazardous materials regulatory program established pursuant to Chapter 6.11  
15 (commencing with Section 25404).

16 (8) The department shall identify the total cumulative expenditures of the  
17 Regulatory Structure Update and Site Mitigation Update projects since their  
18 inception, and shall identify the total projected allocations of budgets and staff  
19 resources that are needed to continue these projects.

20 (9) The department shall identify the total projected allocations of budgets and  
21 staff resources that are necessary for all other activities proposed to be conducted  
22 by the department.

23 (e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of  
24 Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines,  
25 penalties, and funds that are required to be deposited into the Hazardous Waste  
26 Control Account or the Toxic Substances Control Account, the department, with the  
27 approval of the Secretary for Environmental Protection, may take any of the  
28 following actions:

29 (1) Assume responsibility for, or enter into a contract with a private party or with  
30 another public agency, other than the State Board of Equalization, for the collection  
31 of any fees, surcharges, fines, penalties and funds described in subdivision (a) or  
32 otherwise described in this chapter or ~~Chapter 6.8 (commencing with Section~~  
33 ~~25300)~~, Part 2 (commencing with Section 68000) of Division 45, for deposit into  
34 the Hazardous Waste Control Account or the Toxic Substances Control Account.

35 (2) Administer, or by mutual agreement, contract with a private party or another  
36 public agency, for the making of those determinations and the performance of  
37 functions that would otherwise be the responsibility of the State Board of  
38 Equalization pursuant to this chapter, ~~Chapter 6.8 (commencing with Section~~  
39 ~~25300)~~, Part 2 (commencing with Section 68000) of Division 45, or Part 22  
40 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code,  
41 if those activities and functions for which the State Board of Equalization would  
42 otherwise be responsible become the responsibility of the department or, by mutual  
43 agreement, the contractor selected by the department.

1 (f) If, pursuant to subdivision (e), the department, or a private party or another  
2 public agency, pursuant to a contract with the department, performs the  
3 determinations and functions that would otherwise be the responsibility of the State  
4 Board of Equalization, the department shall be responsible for ensuring that persons  
5 who are subject to the fees specified in subdivision (e) have equivalent rights to  
6 public notice and comment, and procedural and substantive rights of appeal, as  
7 afforded by the procedures of the State Board of Equalization pursuant to Part 22  
8 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.  
9 Final responsibility for the administrative adjustment of fee rates and the  
10 administrative appeal of any fees or penalty assessments made pursuant to this  
11 section may only be assigned by the department to a public agency.

12 (g) If, pursuant to subdivision (e), the department, or a private party or another  
13 public agency, pursuant to a contract with the department, performs the  
14 determinations and functions that would otherwise be the responsibility of the State  
15 Board of Equalization, the department shall have equivalent authority to make  
16 collections and enforce judgments as provided to the State Board of Equalization  
17 pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue  
18 and Taxation Code. Unpaid amounts, including penalties and interest, shall be a  
19 perfected and enforceable state tax lien in accordance with Section 43413 of the  
20 Revenue and Taxation Code.

21 (h) The department, with the concurrence of the Secretary for Environmental  
22 Protection, shall determine which administrative functions should be retained by the  
23 State Board of Equalization, administered by the department, or assigned to another  
24 public agency or private party pursuant to subdivisions (e), (f), and (g).

25 (i) The department may adopt regulations to implement subdivisions (e) to (h),  
26 inclusive.

27 (j) The Director of Finance, upon request of the director, may make a loan from  
28 the General Fund to the Hazardous Waste Control Account to meet cash needs. The  
29 loan shall be subject to the repayment provisions of Section 16351 of the  
30 Government Code and the interest provisions of Section 16314 of the Government  
31 Code.

32 (k) The department shall establish, within the Hazardous Waste Control Account,  
33 a reserve of at least one million dollars (\$1,000,000) each year to ensure that all  
34 programs funded by the Hazardous Waste Control Account will not be adversely  
35 affected by any revenue shortfalls.

36 **Comment.** Section 25174(d)(6)(B), (e)(1), and (e)(2) are amended to update cross-references in  
37 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
38 25300) of Division 20 of the Health and Safety Code.

39 **Note.** Section 25174(d)(6)(B) cross-refers to Section 25354. Section 25354 has been proposed for  
40 restatement as three provisions (proposed Sections 68240, 68580, and 68875). This cross-reference  
41 has been updated to refer only to the provision authorizing expenditures for immediate action to  
42 cleanup hazardous substance releases (proposed Section 68875). The remaining provisions, which  
43 relate to appropriations and the funding of the emergency reserve account (proposed Section 68240)

1 and a reporting requirement (proposed Section 68580), do not appear to be relevant to this cross-  
2 reference and will be omitted from the cross-reference.

3 **Absent comment, this proposed cross-reference update will be presumed correct.**

4 **§ 25174.6 (amended). Determination of fee**

5 SEC. \_\_\_. Section 25174.6 of the Health and Safety Code is amended to read:

6 25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as  
7 a percentage of the base rate, as adjusted by the State Board of Equalization,  
8 pursuant to Section 25174.2, or as otherwise provided by this section. The procedure  
9 for determining these fees is as follows:

10 (1) The following fees shall be paid for each ton, or fraction thereof for up to the  
11 first 5,000 tons of the following hazardous wastes disposed of, or submitted for  
12 disposal, in the state at each specific offsite facility by each producer, or at each  
13 specific onsite facility, per month, if the hazardous wastes are not otherwise subject  
14 to the fee specified in paragraph (3) or (4) and are not otherwise exempt from the  
15 fees imposed pursuant to this article:

16 (A) For non-RCRA hazardous waste, excluding asbestos, generated in a remedial  
17 action, a removal action, or a corrective action taken pursuant to this chapter,  
18 Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with  
19 Section 25299.10), or ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2  
20 (commencing with Section 68000) of Division 45, or generated in any other required  
21 or voluntary cleanup, removal, or remediation of a hazardous substance or non-  
22 RCRA hazardous waste, a fee of five dollars and seventy-two cents (\$5.72) per ton.

23 (B) For all other non-RCRA hazardous waste, a fee of 16.31 percent of the base  
24 rate for each ton.

25 (2) Thirteen percent of the base rate for each ton, or fraction thereof, shall be paid  
26 for up to the first 5,000 tons of hazardous waste disposed of, or submitted for  
27 disposal, in the state, at each specific offsite facility by each producer, or at each  
28 specific onsite facility, per month, which result from the extraction, beneficiation,  
29 and processing of ores and minerals, including phosphate rock and the overburden  
30 from the mining of uranium ore and which is not otherwise subject to the fee  
31 specified in paragraph (3) or (4).

32 (3) Two hundred percent of the base rate shall be paid for each ton, or fraction  
33 thereof, of extremely hazardous waste disposed of, or submitted for disposal, in the  
34 state.

35 (4) Two hundred percent of the base rate shall be paid for each ton, or fraction  
36 thereof, of restricted hazardous wastes listed in subdivision (b) of Section 25122.7  
37 disposed of, or submitted for disposal, in the state.

38 (5) Forty and four-tenths percent of the base rate shall be paid for each ton, or  
39 fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the  
40 state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3),  
41 (4), or (6).

1 (6) Five percent of the base rate shall be paid for each ton, or fraction thereof, of  
2 hazardous waste disposed of, or submitted for disposal, in the state, that is a solid  
3 hazardous waste residue resulting from incineration or dechlorination. No fees shall  
4 be imposed pursuant to this paragraph on a solid hazardous waste residue resulting  
5 from incineration or dechlorination which is disposed of, or submitted for disposal,  
6 outside of the state.

7 (7) Fifty percent of the fee that would otherwise be paid for each ton, or fraction  
8 thereof, of hazardous waste disposed of in the state, that is a solid hazardous waste  
9 residue resulting from treatment of a treatable waste by means of a designated  
10 treatment technology, as defined in Section 25179.2. No fees shall be imposed  
11 pursuant to this paragraph on a solid hazardous waste residue resulting from  
12 treatment of a treatable waste by means of a designated treatment technology that is  
13 not a hazardous waste or which is disposed of, or submitted for disposal, outside of  
14 the state.

15 (b) The amount of fees payable to the State Board of Equalization pursuant to this  
16 section shall be calculated using the total wet weight, measured in tons or fractions  
17 thereof, of the hazardous waste in the form in which the hazardous waste existed at  
18 the time of disposal, submission for disposal, or application to land using a land  
19 disposal method, as defined in Section 66260.10 of Title 22 of the California Code  
20 of Regulations, if all of the following apply:

21 (1) The weight of any nonhazardous reagents or treatment additives added to the  
22 waste, after it has been submitted for disposal, for purposes of rendering the waste  
23 less hazardous, shall not be included in those calculations.

24 (2) Except as provided by paragraph (7) of subdivision (a), any RCRA hazardous  
25 waste received, treated, and disposed at the disposal facility shall be subject to a  
26 disposal fee pursuant to this section as if it were a non-RCRA hazardous waste, if  
27 the waste, due to treatment, is no longer a RCRA hazardous waste at the time of  
28 disposal.

29 (c) All fees imposed by this section shall be paid in accordance with Part 22  
30 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

31 (d) This section shall become operative on January 1, 2001.

32 **Comment.** Section 25174.6(a)(1)(A) is amended to update cross-references in accordance with  
33 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
34 of the Health and Safety Code.

35 **§ 25174.7 (amended). Limitation on application of fees**

36 SEC. \_\_. Section 25174.7 of the Health and Safety Code is amended to read:

37 25174.7. (a) The fees provided for in Sections 25174.1 and 25205.5 do not apply  
38 to any of the following:

39 (1) Hazardous wastes which result when a government agency, or its contractor,  
40 removes or remedies a release of hazardous waste in the state caused by another  
41 person.

1 (2) Hazardous wastes generated or disposed of by a public agency operating a  
2 household hazardous waste collection facility in the state pursuant to Article 10.8  
3 (commencing with Section 25218), including, but not limited to, hazardous waste  
4 received from conditionally exempt small quantity commercial generators,  
5 authorized pursuant to Section 25218.3.

6 (3) Hazardous wastes generated or disposed of by local vector control agencies  
7 which have entered into a cooperative agreement pursuant to Section 116180 or by  
8 county agricultural commissioners, if the hazardous wastes result from their control  
9 or regulatory activities and if they comply with the requirements of this chapter and  
10 regulations adopted pursuant thereto.

11 (4) Hazardous waste disposed of, or submitted for disposal or treatment, by any  
12 person, which is discovered and separated from solid waste as part of a load  
13 checking program.

14 (b) Notwithstanding paragraph (1) of subdivision (a), any person responsible for  
15 a release of hazardous waste, which has been removed or remedied by a government  
16 agency, or its contractor, shall pay the fee pursuant to Section 25174.1.

17 (c) Any person who acquires land for the sole purpose of owner-occupied single-  
18 family residential use, and who acquires that land without actual or constructive  
19 notice or knowledge that there is a tank containing hazardous waste on or under that  
20 property, is exempt from the fees imposed pursuant to Sections ~~25174.1, 25174.1~~  
21 and 25205.5, and 25345, in connection with the removal of the tank.

22 **Comment.** Section 25174.7(c) is amended to delete an obsolete cross-reference to Section  
23 25345. See 1997 Cal. Stat. ch. 870, § 42 (repealing Section 25345).

24 **Note.** Section 25174.7(c) cross-refers to fees imposed pursuant to Section 25345. Section 25345  
25 has been repealed. See 1997 Cal. Stat. ch. 870, § 42. Given this, the cross-reference to Section  
26 25345 is proposed to be deleted from this section.

27 It is unclear whether there is another provision that may continue the substance of former Section  
28 25345. **The Commission welcomes comment on this proposed cross-reference deletion and**  
29 **whether the substance of former Section 25345 has been continued elsewhere in the code.**

30 **§ 25178 (amended). Information to be posted on department's website**

31 SEC. \_\_\_. Section 25178 of the Health and Safety Code is amended to read:

32 25178. On or before January 1 of each odd-numbered year, the department shall  
33 post on its ~~Web site, internet website~~, at a minimum, all of the following:

34 (a) The status of the regulatory and program developments required pursuant to  
35 legislative mandates.

36 (b)(1) The status of the hazardous waste facilities permit program that shall  
37 include all of the following information:

38 (A) A description of the final hazardous waste facilities permit applications  
39 received.

40 (B) The number of final hazardous waste facilities permits issued to date.

41 (C) The number of final hazardous waste facilities permits yet to be issued.

42 (D) A complete description of the reasons why the final hazardous waste facilities  
43 permits yet to be issued have not been issued.

1 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that  
2 uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and  
3 that disposes of wastes regulated as hazardous waste pursuant to the federal act.

4 (c) The status of the hazardous waste facilities siting program.

5 (d) The status of the hazardous waste abandoned sites program.

6 (e) A summary of enforcement actions taken by the department pursuant to this  
7 chapter and any other actions relating to hazardous waste management.

8 (f) Summary data on annual quantities and types of hazardous waste generated,  
9 transported, treated, stored, and disposed.

10 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

11 (h) Research activity initiated by the department.

12 (i) Regulatory action by other agencies relating to hazardous waste management.

13 (j) A revised listing of recyclable materials showing any additions or deletions to  
14 the list prepared pursuant to Section 25175 that have occurred since the last report.

15 (k) Any other data considered pertinent by the department to hazardous waste  
16 management.

17 (l) The information specified in subdivision (c) of Section 25161, paragraph (4)  
18 of subdivision (a) of Section 25197.1, ~~subdivision (e) of Section 25354, and~~  
19 ~~Sections 25334.7, and 25356.5.~~ Article 9 (commencing with Section 68575) of  
20 Chapter 3 of Part 2 of Division 45.

21 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site  
22 in Orange County.

23 **Comment.** Section 25178 is amended to update cross-references in accordance with the  
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
25 the Health and Safety Code.

26 This section is also amended to delete an obsolete cross-reference and make a technical change.

27 **Notes. (1)** Section 25178(l) cross-refers to information specified in “subdivision (c) of Section  
28 25354.” Section 25354(c) has been proposed for recodification as multiple provisions. The cross-  
29 reference was updated to refer only to proposed Section 68580, which continues the portion of  
30 subdivision (c) that describes the information that must be included in the report made pursuant to  
31 this section.

32 **Absent comment, this proposed cross-reference update will be presumed correct.**

33 **(2)** Section 25178(l) also cross-references information specified in Section 25356.5. That section  
34 has been repealed. See 2012 Cal. Stat. ch. 39, § 65. For this reason, the cross-reference to 25356.5  
35 has not been continued.

36 **Absent comment, this proposed cross-reference deletion will be presumed correct.**

37 **§ 25184.1 (amended). Application to collect administrative penalty**

38 SEC. \_\_. Section 25184.1 of the Health and Safety Code is amended to read:

39 25184.1. If any administrative order or decision that imposes a penalty is issued  
40 pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300), Part 2~~  
41 (commencing with Section 68000) of Division 45, the administrative order or  
42 decision has become final, and, if applicable, a petition for judicial review of the  
43 final order or decision has not been filed within the time limits prescribed in Section

1 11523 of the Government Code, the department may apply to the clerk of the  
2 appropriate court for a judgment to collect the administrative penalty. The  
3 department's application, which shall include a certified copy of the final  
4 administrative order or decision, constitutes a sufficient showing to warrant issuance  
5 of the judgment. The court clerk shall enter the judgment immediately in conformity  
6 with the application. The judgment so entered has the same force and effect as, and  
7 is subject to all the provisions of law relating to, a judgment in a civil action, and  
8 may be enforced in the same manner as any other judgment of the court in which it  
9 is entered.

10 **Comment.** Section 25184.1 is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 **§ 25186 (amended). Denial, suspension, or revocation of permit, registration, or certificate**

14 SEC. \_\_. Section 25186 of the Health and Safety Code is amended to read:

15 25186. The department may deny, suspend, or revoke any permit, registration, or  
16 certificate applied for, or issued, pursuant to this chapter in accordance with the  
17 procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder  
18 of the permit, registration, or certificate, or in the case of a business concern, any  
19 trustee, officer, director, partner, or any person holding more than 5 percent of the  
20 equity in, or debt liability of, that business concern, has engaged in any of the  
21 following:

22 (a) Any violation of, or noncompliance with, this chapter, Chapter 6.7  
23 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~  
24 Part 2 (commencing with Section 68000) of Division 45, the Porter-Cologne Water  
25 Quality Control Act (Division 7 (commencing with Section 13000) of the Water  
26 Code), the Resource Conservation and Recovery Act of 1976, as amended, (42  
27 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C.  
28 Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation,  
29 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances  
30 Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state  
31 statute or any requirement or regulation adopted pursuant thereto relating to the  
32 generation, transportation, treatment, storage, recycling, disposal, or handling of a  
33 hazardous waste, as defined in Section 25117, a hazardous substance, as defined in  
34 ~~Section 25316,~~ subdivision (a) of Section 68075, or a hazardous material, as defined  
35 in Section 353 of the Vehicle Code, if the violation or noncompliance shows a  
36 repeating or recurring pattern or may pose a threat to public health or safety or the  
37 environment.

38 (b) The aiding, abetting, or permitting of any violation of, or noncompliance with,  
39 this chapter, Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8~~  
40 ~~(commencing with Section 25300),~~ Part 2 (commencing with Section 68000) of  
41 Division 45, the Porter-Cologne Water Quality Act (Division 7 (commencing with  
42 Section 13000) of the Water Code), the Resource Conservation and Recovery Act

1 of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials  
2 Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive  
3 Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec.  
4 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or  
5 any other equivalent federal or state statute or any requirement or regulation adopted  
6 pursuant thereto relating to the generation, transportation, treatment, storage,  
7 recycling, disposal, or handling of a hazardous waste, as defined in Section 25117,  
8 a hazardous substance, as defined in ~~Section 25316~~, subdivision (a) of Section  
9 68075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if  
10 the violation or noncompliance shows a repeating or recurring pattern or may pose  
11 a threat to public health or safety or the environment.

12 (c) Any violation of, or noncompliance with, any order issued by a state or local  
13 agency or by a hearing officer or a court relating to the generation, transportation,  
14 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined  
15 in Section 25117, a hazardous substance, as defined in ~~Section 25316~~, subdivision  
16 (a) of Section 68075, or a hazardous material, as defined in Section 353 of the  
17 Vehicle Code.

18 (d) Any misrepresentation or omission of a significant fact or other required  
19 information in the application for the permit, registration, or certificate, or in  
20 information subsequently reported to the department or to a local officer or agency  
21 authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

22 (e)(1) Activities resulting in any federal or state conviction that are significantly  
23 related to the fitness of the applicant or holder of the permit, registration, or  
24 certificate to perform the applicant's duties or activities under the permit,  
25 registration, or certificate.

26 (2) For the purposes of this paragraph, "conviction" means a plea or verdict of  
27 guilty or a conviction following a plea of nolo contendere.

28 (3) An action that the department may take pursuant to this paragraph relating to  
29 the denial, suspension, or revocation of a permit, registration, or certificate may be  
30 based upon a conviction for which any of the following has occurred:

31 (A) The time for appeal has elapsed.

32 (B) The judgment of conviction has been affirmed on appeal.

33 (C) Any order granting probation is made suspending the imposition of sentence,  
34 notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code  
35 permitting that person to withdraw the person's plea of guilty, and to enter a plea of  
36 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
37 information, or indictment.

38 (f) Activities resulting in the revocation or suspension of a license, permit,  
39 registration, or certificate held by the applicant or holder of the permit, registration,  
40 or certificate or, if the applicant or holder of the permit, registration, or certificate is  
41 a business concern, by any trustee, officer, director, partner, or any person holding  
42 more than 5 percent of the equity in, or debt liability of, that business concern  
43 relating to, the generation, transportation, treatment, storage, recycling, disposal, or

1 handling of a hazardous waste, as defined in Section 25117, a hazardous substance,  
2 as defined in ~~Section 25316~~, subdivision (a) of Section 68075, or a hazardous  
3 material, as defined in Section 353 of the Vehicle Code.

4 **Comment.** Section 25186 is amended throughout to update cross-references in accordance with  
5 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
6 of the Health and Safety Code.

7 **§ 25187 (amended). Order requiring corrective action and imposing penalties for violation**

8 SEC. \_\_. Section 25187 of the Health and Safety Code is amended to read:

9 25187. (a)(1) The department or a unified program agency, in accordance with  
10 subdivision (l), may issue an order requiring that the violation be corrected and  
11 imposing an administrative penalty, for any violation of this chapter or any permit,  
12 rule, regulation, standard, or requirement issued or adopted pursuant to this chapter,  
13 whenever the department or unified program agency determines that a person has  
14 violated, is in violation of, or threatens, as defined in subdivision (e) of Section  
15 13304 of the Water Code, to violate, this chapter or ~~Chapter 6.8 (commencing with~~  
16 ~~Section 25300)~~, Part 2 (commencing with Section 68000) of Division 45, or any  
17 permit, rule, regulation, standard, or requirement issued or adopted pursuant to this  
18 chapter or ~~Chapter 6.8 (commencing with Section 25300)~~. Part 2 (commencing with  
19 Section 68000) of Division 45.

20 (2) In an order proposing a penalty pursuant to this section, the department or  
21 unified program agency shall take into consideration the nature, circumstances,  
22 extent, and gravity of the violation, the violator's past and present efforts to prevent,  
23 abate, or clean up conditions posing a threat to the public health or safety or the  
24 environment, the violator's ability to pay the proposed penalty, and the prophylactic  
25 effect that the imposition of the proposed penalty would have on both the violator  
26 and the regulated community as a whole.

27 (b) The department or a unified program agency, in accordance with subdivision  
28 (l), may issue an order requiring corrective action whenever the department or  
29 unified program agency determines that there is or has been a release, as defined in  
30 ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section  
31 68000) of Division 45, of hazardous waste or constituents into the environment from  
32 a hazardous waste facility.

33 (1) In the case of a release of hazardous waste or constituents into the environment  
34 from a hazardous waste facility that is required to obtain a permit pursuant to Article  
35 9 (commencing with Section 25200), the department shall pursue the remedies  
36 available under this chapter, including the issuance of an order for corrective action  
37 pursuant to this section, before using the legal remedies available pursuant to  
38 ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section  
39 68000) of Division 45, except in any of the following circumstances:

40 (A) If the person who is responsible for the release voluntarily requests in writing  
41 that the department issue an order to that person to take corrective action pursuant

1 to ~~Chapter 6.8 (commencing with Section 25300). Part 2 (commencing with Section~~  
2 68000) of Division 45.

3 (B) If the person who is responsible for the release is unable to pay for the cost of  
4 corrective action to address the release. For purposes of this subparagraph, the  
5 inability of a person to pay for the cost of corrective action shall be determined in  
6 accordance with the policies of the Environmental Protection Agency for the  
7 implementation of Section 9605 of Title 42 of the United States Code.

8 (C) If the person responsible for the release is unwilling to perform corrective  
9 action to address the release. For purposes of this subparagraph, the unwillingness  
10 of a person to take corrective action shall be determined in accordance with the  
11 policies of the Environmental Protection Agency for the implementation of Section  
12 9605 of Title 42 of the United States Code.

13 (D) If the release is part of a regional or multisite groundwater contamination  
14 problem that cannot, in its entirety, be addressed using the legal remedies available  
15 pursuant to this chapter and for which other releases that are part of the regional or  
16 multisite groundwater contamination problem are being addressed using the legal  
17 remedies available pursuant to ~~Chapter 6.8 (commencing with Section 25300). Part~~  
18 2 (commencing with Section 68000) of Division 45.

19 (E) If an order for corrective action has already been issued against the person  
20 responsible for the release, or the department and the person responsible for the  
21 release have, prior to January 1, 1996, entered into an agreement to address the  
22 required cleanup of the release pursuant to ~~Chapter 6.8 (commencing with Section~~  
23 25300). Part 2 (commencing with Section 68000) of Division 45.

24 (F) If the hazardous waste facility is owned or operated by the federal government.

25 (2) The order shall include a requirement that the person take corrective action  
26 with respect to the release of hazardous waste or constituents, abate the effects  
27 thereof, and take any other necessary remedial action.

28 (3) If the order requires corrective action at a hazardous waste facility, the order  
29 shall require that corrective action be taken beyond the facility boundary, where  
30 necessary to protect human health or the environment.

31 (4) The order shall incorporate, as a condition of the order, any applicable waste  
32 discharge requirements issued by the State Water Resources Control Board or a  
33 California regional water quality control board, and shall be consistent with all  
34 applicable water quality control plans adopted pursuant to Section 13170 of the  
35 Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of  
36 Division 7 of the Water Code and state policies for water quality control adopted  
37 pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7  
38 of the Water Code existing at the time of the issuance of the order, to the extent that  
39 the department or unified program agency determines that those plans and policies  
40 are not less stringent than this chapter and regulations adopted pursuant to this  
41 chapter. The order may include any more stringent requirement that the department  
42 or unified program agency determines is necessary or appropriate to protect water  
43 quality.

1 (5) Persons who are subject to an order pursuant to this subdivision include  
2 present and prior owners, lessees, or operators of the property where the hazardous  
3 waste is located, present or past generators, storers, treaters, transporters, disposers,  
4 and handlers of hazardous waste, and persons who arrange, or have arranged, by  
5 contract or other agreement, to store, treat, transport, dispose of, or otherwise handle  
6 hazardous waste.

7 (6) For purposes of this subdivision, “hazardous waste facility” includes the entire  
8 site that is under the control of an owner or operator engaged in the management of  
9 hazardous waste.

10 (c) Any order issued pursuant to this section shall be served by personal service  
11 or certified mail and shall inform the person so served of the right to a hearing. If  
12 the unified program agency issues the order pursuant to this section, the order shall  
13 state whether the hearing procedure specified in paragraph (2) of subdivision (f)  
14 may be requested by the person receiving the order.

15 (d) Any person served with an order pursuant to this section who has been unable  
16 to resolve any violation or deficiency on an informal basis with the department or  
17 unified program agency may, within 15 days after service of the order, request a  
18 hearing pursuant to subdivision (e) or (f) by filing with the department or unified  
19 program agency a notice of defense. The notice shall be filed with the office that  
20 issued the order. A notice of defense shall be deemed filed within the 15-day period  
21 provided by this subdivision if it is postmarked within that 15-day period. If a notice  
22 of defense is not filed within the time limits provided by this subdivision, the order  
23 shall become final.

24 (e) Any hearing requested on an order issued by the department shall be conducted  
25 within 90 days after receipt of the notice of defense by an administrative law judge  
26 of the Office of Administrative Hearings of the Department of General Services in  
27 accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of  
28 Division 3 of Title 2 of the Government Code, and the department shall have all the  
29 authority granted to an agency by those provisions.

30 (f) Except as provided in subparagraph (B) of paragraph (2), a person requesting  
31 a hearing on an order issued by a unified program agency may select the hearing  
32 process specified in either paragraph (1) or (2) in the notice of defense filed with the  
33 unified program agency pursuant to subdivision (d). Within 90 days of receipt of  
34 the notice of defense by the unified program agency, the hearing shall be conducted  
35 using one of the following procedures:

36 (1) An administrative law judge of the Office of Administrative Hearings of the  
37 Department of General Services shall conduct the hearing in accordance with  
38 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of  
39 the Government Code.

40 (2)(A) A hearing officer designated by the unified program agency shall conduct  
41 the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of  
42 Part 1 of Division 3 of Title 2 of the Government Code, and the unified program  
43 agency shall have all the authority granted to an agency by those provisions. When

1 a hearing is conducted by a unified program agency pursuant to this paragraph, the  
2 unified program agency shall, within 60 days of the hearing, issue a decision.

3 (B) A person requesting a hearing on an order issued by a unified program agency  
4 may select the hearing process specified in this paragraph in a notice of defense filed  
5 pursuant to subdivision (d) only if the unified program agency has, as of the date  
6 the order is issued pursuant to subdivision (c), selected a designated hearing officer  
7 and established a program for conducting a hearing in accordance with this  
8 paragraph.

9 (g) The hearing decision issued pursuant to subdivision (f) is effective and final  
10 upon issuance. Copies of the decision shall be served by personal service or by  
11 certified mail upon the party served with the order and upon other persons who  
12 appeared at the hearing and requested a copy.

13 (h) Any provision of an order issued under this section, except the imposition of  
14 an administrative penalty, takes effect upon issuance by the department or unified  
15 program agency if the department or unified program agency finds that the violation  
16 or violations of law associated with that provision may pose an imminent and  
17 substantial endangerment to the public health or safety or the environment, and a  
18 request for a hearing shall not stay the effect of that provision of the order pending  
19 a hearing decision. However, if the department or unified program agency  
20 determines that any or all provisions of the order are so related that the public health  
21 or safety or the environment can be protected only by immediate compliance with  
22 the order as a whole, then the order as a whole, except the imposition of an  
23 administrative penalty, takes effect upon issuance by the department or unified  
24 program agency. A request for a hearing shall not stay the effect of the order as a  
25 whole pending a hearing decision.

26 (i) A decision issued pursuant to this section may be reviewed by the court  
27 pursuant to Section 11523 of the Government Code. In all proceedings pursuant to  
28 this section, the court shall uphold the decision of the department or unified program  
29 agency if the decision is based upon substantial evidence in the whole record. The  
30 filing of a petition for writ of mandate shall not stay any action required pursuant to  
31 this chapter or the accrual of any penalties assessed pursuant to this chapter. This  
32 subdivision does not prohibit the court from granting any appropriate relief within  
33 its jurisdiction.

34 (j)(1) All administrative penalties collected from actions brought by the  
35 department pursuant to this section shall be placed in a separate subaccount in the  
36 Toxic Substances Control Account and shall be available only for transfer to the  
37 Site Remediation Account or the Expedited Site Remediation Trust Fund and for  
38 expenditure by the department upon appropriation by the Legislature.

39 (2) The administrative penalties collected from an action brought by the  
40 department pursuant to Sections 25214.3, 25214.22.1, and 25215.82, in accordance  
41 with this section, shall be deposited in the Toxic Substances Control Account, for  
42 expenditure by the department for implementation and enforcement activities, upon  
43 appropriation by the Legislature, pursuant to Section 25173.6.

1 (k) All administrative penalties collected from an action brought by a unified  
2 program agency pursuant to this section shall be paid to the unified program agency  
3 that imposed the penalty, and shall be deposited into a special account that shall be  
4 expended to fund the activities of the unified program agency in enforcing this  
5 chapter pursuant to Section 25180.

6 (l) The authority granted under this section to a unified program agency is limited  
7 to both of the following:

8 (1) The issuance of orders to impose penalties and to correct violations of the  
9 requirements of this chapter and its implementing regulations, only when the  
10 violations are violations of requirements applicable to hazardous waste generators  
11 and persons operating pursuant to a permit-by-rule, conditional authorization, or  
12 conditional exemption, when the violations occur at a unified program facility  
13 within the jurisdiction of the CUPA.

14 (2) The issuance of orders to require corrective action when there has been a  
15 release of hazardous waste or constituents only when the unified program agency is  
16 authorized to do so pursuant to Section 25404.1.

17 (m) The CUPA shall annually submit a summary report to the department on the  
18 status of orders issued by the unified program agencies under this section and  
19 Section 25187.1.

20 (n) The CUPA shall consult with the district attorney for the county on the  
21 development of policies to be followed in exercising the authority delegated  
22 pursuant to this section and Section 25187.1, as they relate to the authority of unified  
23 program agencies to issue orders.

24 (o) The CUPA shall arrange to have appropriate legal representation in  
25 administrative hearings that are conducted by an administrative law judge of the  
26 Office of Administrative Hearings of the Department of General Services, and when  
27 a decision issued pursuant to this section is appealed to the superior court.

28 (p) The department may adopt regulations to implement this section and  
29 paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of  
30 unified program agencies to issue orders. The regulations shall include, but not be  
31 limited to, all of the following requirements:

32 (1) Provisions to ensure coordinated and consistent application of this section and  
33 Section 25187.1 when both the department and the unified program agency have  
34 issued or will be issuing orders under one or both of these sections with regard to  
35 the same facility.

36 (2) Provisions to ensure that the enforcement authority granted to the unified  
37 program agencies will be exercised consistently throughout the state.

38 (3) Minimum training requirements for staff of the unified program agency  
39 relative to this section and Section 25187.1.

40 (4) Procedures to be followed by the department to rescind the authority granted  
41 to a unified program agency under this section and Section 25187.1, if the  
42 department finds that the unified program agency is not exercising that authority in

1 a manner consistent with this chapter and Chapter 6.11 (commencing with Section  
2 25404) and the regulations adopted pursuant thereto.

3 (q) Except for an enforcement action taken pursuant to this chapter or ~~Chapter 6.8~~  
4 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 68000) of  
5 Division 45, this section does not otherwise affect the authority of a local agency to  
6 take any action under any other law.

7 **Comment.** Subdivisions (a), (b), and (q) of Section 25187 are amended to update cross-  
8 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with  
9 Section 25300) of Division 20 of the Health and Safety Code.

10 **§ 25189.1 (amended). Civil liability for costs or expenses incurred by state or local agency**

11 SEC. \_\_. Section 25189.1 of the Health and Safety Code is amended to read:

12 25189.1. (a) In addition to liability under any other provision of law, any person  
13 who is liable for a civil penalty pursuant to subdivision (c) or (d) of Section 25189  
14 or subdivision (c) of Section 25189.2, or is convicted pursuant to subdivision (b) of  
15 Section 25189.5, is also civilly liable for all the costs or expenses which may be  
16 incurred by the state, or by a local agency, in doing any of the following:

17 (1) Assess short-term or long-term injury to, degradation or destruction of, or any  
18 loss of, any natural resource resulting from the disposal of the hazardous waste  
19 which is the subject of the civil penalty or conviction.

20 (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource  
21 injured, degraded, destroyed, or lost as a result of the disposal of the hazardous  
22 waste which is the subject of the civil penalty or conviction.

23 (b) The liability imposed by subdivision (a) is separate and in addition to any civil  
24 penalty imposed pursuant to subdivision (c) or (d) of Section 25189 or subdivision  
25 (c) of Section 25189.2 or any fine imposed pursuant to subdivision (e) of Section  
26 25189.5.

27 (c) Any funds collected pursuant to this section are in addition to any other funds  
28 which may be collected pursuant to this chapter.

29 (d) A state or local agency may collect funds pursuant to this section prior to  
30 carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

31 (e) An action brought pursuant to this section may be brought by the trustee of the  
32 natural resources specified in ~~subdivision (e) of Section 25352~~. Section 69685. The  
33 action may be prosecuted by the Attorney General or the district attorney. The action  
34 may be prosecuted by the district attorney only after the trustee, in consultation with  
35 the Office of the Attorney General, approves that prosecution in writing. The trustee  
36 shall have 30 days to consider any requested action and approval shall be presumed  
37 to have been granted if a written denial is not issued within 30 days. The trustee may  
38 not unreasonably withhold approval.

39 (f) All funds collected pursuant to this section by the trustee of the natural  
40 resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife  
41 Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund  
42 or in a special deposit trust fund.

1       **Comment.** Section 25189.1 is amended to update cross-references in accordance with the  
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
3 the Health and Safety Code.

4       **§ 25198.3 (amended). Cooperative agreements**

5       SEC. \_\_. Section 25198.3 of the Health and Safety Code is amended to read:

6       25198.3. (a) The secretary may enter into any cooperative agreement which meets  
7 the requirements of this article.

8       (b) Each cooperative agreement shall include, but shall not be limited to, all  
9 requirements determined to be necessary to meet the requirements of subdivision

10 (e) to do all of the following:

11       (1) Protect water quality, as determined by the State Water Resources Control  
12 Board or the appropriate California regional water quality control board.

13       (2) Protect air quality, as determined by the State Air Resources Board or the  
14 appropriate air pollution control officer.

15       (3) Provide for proper management of hazardous materials and hazardous wastes,  
16 as determined necessary by the Department of Toxic Substances Control.

17       (4) In making these determinations, the state agencies shall consider any  
18 applicable federal environmental and public health and safety laws.

19       (c) A decision by the secretary whether to enter into a cooperative agreement shall  
20 be based on a good faith determination concerning whether a proposed cooperative  
21 agreement meets the requirements of this article. The secretary shall take this action  
22 within 130 days of a written request by the tribe that the secretary approve a draft  
23 cooperative agreement. At least 60 days prior to determining whether to enter into  
24 a cooperative agreement, the secretary shall provide notice, and make available for  
25 public review and comment, drafts of ~~his or her~~ the secretary's proposed action and  
26 drafts of the findings and determinations that are required by this section. The  
27 secretary shall hold a public hearing in the affected area on the proposed action  
28 within the time period for taking that action, as specified in this section. Within 10  
29 days after the close of the public review and comment period, the agencies shall  
30 complete the determinations required by this section and the secretary shall issue a  
31 final decision.

32       (d) The findings and determinations of the secretary and relevant agencies made  
33 pursuant to this section shall explain material differences between state laws and  
34 regulations and the proposed tribal or federal functionally equivalent provisions.  
35 The findings and determinations do not need to explain each difference between the  
36 state and tribal or federal requirements as long as they identify and evaluate whether  
37 the material differences meet the requirements of this article, including, but not  
38 limited to, providing at least as much protection for public health and safety and the  
39 environment as would the state requirements.

40       (e) Any cooperative agreement executed pursuant to this article shall provide for  
41 regulation of the hazardous waste facility through inclusion in the agreement of  
42 design, permitting, construction, siting, operation, monitoring, inspection, closure,

1 postclosure, liability, enforcement, and other regulatory provisions applicable to a  
2 hazardous waste facility, or which relate to any environmental consequences that  
3 may be caused by facility construction or operation, that are functionally equivalent  
4 to all of the following:

5 (1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5  
6 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section  
7 13370) of, Division 7 of the Water Code.

8 (2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with  
9 Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of,  
10 and Part 6 (commencing with Section 44300) of, Division 26.

11 (3) This chapter, Chapter 6.6 (commencing with Section 25249.5), ~~Chapter 6.8~~  
12 ~~(commencing with Section 25300)~~, and Chapter 6.95 (commencing with Section  
13 25500) , of this division, and Part 2 (commencing with Section 68000) of Division  
14 45.

15 (4) All regulations adopted pursuant to the statutes specified in this section.

16 (5) Any other provision of state environmental, public health, and safety laws and  
17 regulations germane to the hazardous waste facility proposed by the tribe.

18 (f) The tribal organizational structures or other means of implementing the  
19 requirements specified in subdivision (e) are not required to be the same as the state  
20 organizational structures or means of implementing its system of regulation.

21 (g) Neither the approval of any cooperative agreement nor amendments to the  
22 agreement, nor any determination of sufficiency provided in Section 25198.5, shall  
23 constitute a “project” as defined in Section 21065 of the Public Resources Code and  
24 shall not be subject to review pursuant to the California Environmental Quality Act  
25 (Division 13 (commencing with Section 21000) of the Public Resources Code).

26 (h) Each cooperative agreement shall provide for the incorporation of the  
27 standards and requirements germane to the protection of the environment, public  
28 health, and safety listed in subdivision (e), as enacted, or as those provisions may  
29 be amended after January 1, 1992, or after the effective date of any cooperative  
30 agreement, if those standards and requirements meet both of the following  
31 requirements:

32 (1) The standards and requirements do not discriminate against a tribe which has  
33 executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or  
34 not more stringent than, other rules applicable to other similar or analogous facilities  
35 or operations outside Indian country.

36 (2) Adequate notice and opportunity for comment on the incorporation of new and  
37 amended standards or requirements are provided to the tribe, facility owner, and  
38 operator to facilitate any physical or operational changes in the facility in  
39 accordance with state law.

40 **Comment.** Section 25198.3(e)(3) is amended to update cross-references in accordance with the  
41 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
42 the Health and Safety Code.

43 This section is also amended to eliminate gendered pronouns.

1 **§ 25201.9 (amended). Agreement for consultative services**

2 SEC. \_\_. Section 25201.9 of the Health and Safety Code is amended to read:

3 25201.9. (a) Upon the written request of any person, the department may enter  
4 into an agreement with that person pursuant to which the department will perform  
5 consultative services for the purpose of providing assistance to the person, or any  
6 facility owned or operated by the person, in complying with this chapter, ~~Chapter~~  
7 ~~6.8 (commencing with Section 25300)~~, Part 2 (commencing with Section 68000) of  
8 Division 45, and any regulations adopted pursuant to those provisions. The  
9 agreement shall require the person to reimburse the department for its costs of  
10 performing the consultative services pursuant to Article 9.2 (commencing with  
11 Section 25206.1). The agreement may provide for some or all of the reimbursement  
12 to be made in advance of the performance of the consultative services.

13 (b) The consultative services performed pursuant to subdivision (a) shall be over  
14 and above the routine functions of the department, and may include, but need not  
15 be limited to, onsite inspections, regulation and compliance training, and technical  
16 consultation.

17 (c) Any reimbursement received for assistance in complying with this chapter  
18 pursuant to this section shall be placed in the Hazardous Waste Control Account for  
19 disbursement in accordance with Section 25174. Any reimbursement received for  
20 assistance in complying with ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2  
21 (commencing with Section 68000) of Division 45 shall be deposited in the Toxic  
22 Substances Control Account for expenditure in accordance with Section 25173.6.

23 (d) The consultative services shall be provided subject to available staff and  
24 resources as determined by the department, and may include, but need not be limited  
25 to, onsite inspections, regulation and compliance training, and technical  
26 consultation.

27 (e) In scheduling limited onsite inspections, priority shall be given to businesses  
28 with fewer than 50 employees.

29 (f)(1) The staff of the department providing consultation pursuant to this section  
30 shall not initiate an administrative or civil enforcement action, except as specified  
31 in subdivision (g), for violations identified during a limited onsite inspection  
32 conducted pursuant to an agreement at a facility which does not require a permit  
33 pursuant to the federal act.

34 (2) The staff of the department shall require the owner or operator to correct any  
35 identified deficiencies and violations in accordance with a schedule for compliance  
36 or correction issued by the department.

37 (g) If class I violations, as defined in regulations adopted by the department, are  
38 identified during a limited onsite inspection, or an owner or operator refuses or fails  
39 to correct any deficiencies or violations within the timeframe specified in the  
40 schedule for compliance or correction issued by the department pursuant to  
41 subdivision (f), the department may undertake any further inspection, investigation,  
42 or enforcement action authorized by law.

1 (h) The failure of the department to discover any particular deficiencies or  
2 violations during a limited onsite inspection shall not preclude the department, or  
3 any other agency, from undertaking a subsequent enforcement action to address any  
4 deficiencies or violations should they be discovered at a later time.

5 (i) Nothing in this section is intended to limit the authority of the department to  
6 refer criminal violations to the Attorney General, a district attorney, a county  
7 counsel, or a city attorney.

8 (j) Other than as expressly provided in this section, nothing in this section is  
9 intended to limit or restrict the authority of the department under any other provision  
10 of this division.

11 (k) This section shall become operative only if the department adopts regulations  
12 defining “class I violations.”

13 **Comment.** Section 25201.9 is amended to update cross-references in accordance with the  
14 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
15 the Health and Safety Code.

16 **§ 25205.23 (amended). Settlement of fee disputes**

17 SEC. \_\_. Section 25205.23 of the Health and Safety Code is amended to read:

18 25205.23. Notwithstanding Chapter 3 (commencing with Section 43151) of Part  
19 22 of Division 2 of the Revenue and Taxation Code, at the request of any party  
20 contesting any fee imposed pursuant to this chapter or ~~Chapter 6.8 (commencing~~  
21 ~~with Section 25300)~~, Part 2 (commencing with Section 68000) of Division 45, the  
22 department may hold an informal conference to attempt to settle the dispute. Upon  
23 the payment of any sum agreed upon between the contesting party and the  
24 department in settlement of the disputed fee liability, the liable person shall be  
25 released from any further liability for payment of the disputed fee.

26 **Comment.** Section 25205.23 is amended to update cross-references in accordance with the  
27 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
28 the Health and Safety Code.

29 **§ 25207.12 (amended). Collection of banned, unregistered, or outdated agricultural wastes**

30 SEC. \_\_. Section 25207.12 of the Health and Safety Code is amended to read:

31 25207.12. (a) Any eligible participant who submits banned, unregistered, or  
32 outdated agricultural wastes for collection in a program established pursuant to this  
33 article is exempt from the fees and reimbursements required by Sections 25174.1,  
34 25205.2, 25205.5, and 25205.7, with regard to the wastes submitted for collection.

35 (b) An eligible participant who submits banned, unregistered, or outdated  
36 agricultural wastes for collection is exempt from the hazardous waste facilities  
37 permit requirements of Section 25201 with regard to the management of the wastes  
38 submitted for collection.

39 (c) A county operating a collection program in compliance with this article shall  
40 not be held liable in any cost recovery action brought pursuant to Section ~~25360~~  
41 69650 for any hazardous waste which has been properly handled and transported to

1 an authorized hazardous waste treatment or disposal facility, in compliance with this  
2 chapter, at a location other than that of the collection program.

3 **Comment.** Section 25207.12 is amended to update cross-references in accordance with the  
4 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
5 the Health and Safety Code.

6 **§ 25208.11 (amended). Construction of article**

7 SEC. \_\_. Section 25208.11 of the Health and Safety Code is amended to read:

8 25208.11. This article shall not be construed to limit or abridge the powers and  
9 duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8~~  
10 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 68000) of  
11 Division 45 or to the state board or any regional board pursuant to Division 7  
12 (commencing with Section 13000) of the Water Code.

13 **Comment.** Section 25208.11 is amended to update cross-references in accordance with the  
14 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
15 the Health and Safety Code.

16 **§ 25215.1 (amended). Definitions**

17 SEC. \_\_. Section 25215.1 of the Health and Safety Code is amended to read:

18 25215.1. For purposes of this article, the following definitions shall apply:

19 (a) “Board” means the California Department of Tax and Fee Administration.

20 (b) “Business” means any person, as defined in subdivision (k), except a natural  
21 person or a city, county, city and county, district, commission, the state, or any  
22 department, agency, or political subdivision of any of those, or an interstate body  
23 or, to the extent permitted by law, the United States and its agencies and  
24 instrumentalities.

25 (c) “California battery fee” means the fee imposed pursuant to Section 25215.25.

26 (d) “Dealer” means a person who engages in the retail sale of replacement lead-  
27 acid batteries directly to persons in California. “Dealer” includes a manufacturer of  
28 a new lead-acid battery that sells at retail that lead-acid battery directly to a person  
29 through any means, including, but not limited to, a transaction conducted through a  
30 sales outlet, catalog, or internet website or any other similar electronic means.

31 (e) “Importer” means a person described in paragraph (2) of subdivision (h).

32 (f) “Lead-acid battery” means a battery weighing over five kilograms that is  
33 primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid,  
34 solid, or gel state, with a capacity of six volts or more that is used for any of the  
35 following purposes:

36 (1) As a starting battery that is designed to deliver a high burst of energy to an  
37 internal combustion engine until it starts.

38 (2) As a motive power battery that is designed to provide the source of power for  
39 propulsion or operation of a vehicle, including a watercraft.

40 (3) As a stationary storage or standby battery that is designed to be used in systems  
41 where the battery acts as either electrical storage for electricity generation

1 equipment or a source of emergency power, or otherwise serves as a backup in case  
2 of failure or interruption in the flow of power from the primary source.

3 (4) As a source of auxiliary power to support the electrical systems in a vehicle,  
4 as defined in Section 670 of the Vehicle Code, including an implement of husbandry  
5 as defined in Section 36000 of the Vehicle Code, or an aircraft.

6 (g)(1) “Lead-acid battery recycling facility” means a site at which lead-acid  
7 batteries are or have been disassembled for the purpose of making components  
8 available for reclamation to produce elemental lead or lead alloys or at which lead-  
9 acid batteries or their components, or both, are or have been reclaimed to produce  
10 elemental lead or lead alloys.

11 (2) “Lead-acid battery recycling facility” does not include a facility designed and  
12 operated for the primary purpose of recovering lead from materials other than used  
13 lead-acid batteries. The processing of lead previously reclaimed from a lead-acid  
14 battery at a separate facility shall not be sufficient to establish that a facility is a  
15 lead-acid battery recycling facility.

16 (h) “Manufacturer” means either of the following:

17 (1) The person who manufactures the lead-acid battery and who sells, offers for  
18 sale, or distributes the lead-acid battery in the state.

19 (2)(A) If there is no person described in paragraph (1) that is subject to the  
20 jurisdiction of the state, the manufacturer is the person who imports the lead-acid  
21 battery into the state for sale or distribution.

22 (B) For purposes of this article, a person is subject to the jurisdiction of the state  
23 with respect to a lead-acid battery if the person is engaged in business in this state.  
24 For purposes of this subparagraph, a person shall be considered to be engaged in  
25 business in this state if the person is a “retailer engaged in business in this state,” as  
26 defined in subdivision (c) of Section 6203 of the Revenue and Taxation Code, with  
27 respect to that lead-acid battery, or if the person has a substantial nexus with this  
28 state for purposes of the commerce clause of the United States Constitution.

29 (i) “Manufacturer battery fee” means the fee imposed pursuant to Section  
30 25215.35.

31 (j) “Owner or operator” has the same meaning given in Section 9601(20) of Title  
32 42 of the United States Code and any person that previously met that definition or  
33 is the legal successor to a person that meets the definition or previously met the  
34 definition.

35 (k) “Person” means an individual, trust, firm, joint stock company, business  
36 concern, corporation, including, but not limited to, a government corporation,  
37 partnership, limited liability company, or association. “Person” also includes any  
38 city, county, city and county, district, commission, the state, or any department,  
39 agency, or political subdivision of any of those, interstate body, and the United  
40 States and its agencies and instrumentalities to the extent permitted by law.

41 (l) “Remedial action” has the same meaning as in Section ~~25322~~. 68125.

42 (m) “Removal” has the same meaning as in Section ~~25323~~. 68135.

1 (n) “Replacement lead-acid battery” means a new lead-acid battery that is sold at  
2 retail subsequent to the original sale or lease of the equipment or vehicle in which  
3 the lead-acid battery is intended to be used. “Replacement lead-acid battery” does  
4 not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-  
5 acid battery.

6 (o) “Response action” has the same meaning as in Section ~~25323.3~~ 68140.

7 (p)(1) A “retail sale” or a “sale at retail” has the same meaning as defined in  
8 Section 6007 of the Revenue and Taxation Code.

9 (2) The following shall not be considered a “retail sale” or a “sale at retail” for  
10 purposes of this article:

11 (A) The sale of a battery for which a California battery fee has previously been  
12 paid.

13 (B) The sale of a replacement lead-acid battery that is temporarily stored or used  
14 in California for the sole purpose of preparing the replacement lead-acid battery for  
15 use thereafter solely outside of the state and that is subsequently transported outside  
16 the state and thereafter used solely outside of the state.

17 (C) The sale of a battery for incorporation into new equipment for subsequent  
18 resale.

19 (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle  
20 service contract described under Section 12800 of the Insurance Code.

21 (E) The sale of any battery intended for use with or contained within a medical  
22 device, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.  
23 321(h)), as that definition may be amended.

24 (q) “Used lead-acid battery” means a lead-acid battery no longer fully capable of  
25 providing the power for which it was designed or that a person no longer wants for  
26 any other reason.

27 (r) “Wholesaler” means a person who purchases a lead-acid battery from a  
28 manufacturer for the purpose of selling the lead-acid battery to a dealer, high-  
29 volume customer, or person for incorporation into new equipment for resale.

30 **Comment.** Subdivisions (l), (m), and (o) of Section 25215.1 are amended to update cross-  
31 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with  
32 Section 25300) of Division 20 of the Health and Safety Code.

33 **§ 25215.56 (amended). Manufacturer battery fees**

34 SEC. \_\_. Section 25215.56 of the Health and Safety Code is amended to read:

35 25215.56. (a) Any manufacturer battery fees remitted pursuant to this article shall,  
36 subject to subdivision (b) of Section 25215.3, be credited to the account of the  
37 manufacturer remitting those fees to the California Department of Tax and Fee  
38 Administration and shall be credited against amounts owed by the manufacturer to  
39 the state pursuant to a judgment or determination of liability under ~~Chapter 6.8~~  
40 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 68000) of  
41 Division 45 or any other law for removal, remediation, or other response costs  
42 relating to a release of a hazardous substance from a lead-acid battery recycling

1 facility. A manufacturer shall not seek more than one credit for the same fee amount.  
2 This subdivision does not apply to any manufacturer who is also an owner or  
3 operator of a lead-acid battery recycling facility in California.

4 (b) The amount paid by a manufacturer for a manufacturer battery fee shall be  
5 considered to reduce the manufacturer's share of liability in the allocation or  
6 apportionment of costs among potentially responsible parties in a contribution  
7 action brought by a private party related to a release of hazardous substances from  
8 a lead-acid battery recycling facility. This subdivision does not apply to any  
9 manufacturer who is also an owner or operator or a former owner or operator of a  
10 lead-acid battery recycling facility in California where a release occurred.

11 (c) This article does not create a private cause of action. Nothing in this article  
12 shall be construed to affect, expand, alter, or limit any requirements, duties, rights,  
13 or remedies under other law, or limit the state or any other party from bringing any  
14 cause of action that may exist under any law.

15 **Comment.** Section 25215.56 is amended to update cross-references in accordance with the  
16 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
17 the Health and Safety Code.

18 **§ 25220 (amended). Recorded land use restriction**

19 SEC. \_\_. Section 25220 of the Health and Safety Code is amended to read:

20 25220. (a) The department shall notify the planning and building department of  
21 each city, county, or regional council of governments of any recorded land use  
22 restriction imposed within the jurisdiction of the local agency pursuant to the former  
23 Section 25229, 25230, or 25398.7, as those sections read prior to the effective date  
24 of this article, or Section 25202.5, 25221, or ~~25355.5~~. 69055. Upon receiving this  
25 notification, the planning and building department shall do both of the following:

26 (1) File all recorded land use restrictions in the property files of the city, county,  
27 or regional council of government.

28 (2) Require that a person requesting a land use that differs from those filed land  
29 use restrictions on the property apply to the department for a variance or a removal  
30 of the land use restrictions pursuant to Section 25223 or 25224.

31 (b) A planning and building department of a city, county, or regional council of  
32 governments may assess a property owner a reasonable fee to cover the costs of  
33 taking the actions required by subdivision (a). For purposes of this subdivision,  
34 "property owner" does not include a person who holds evidence of ownership solely  
35 to protect a security interest in the property, unless the person participates, or has a  
36 legal right to participate, in the management of the property.

37 (c) The department shall maintain a list of all recorded land use restrictions,  
38 including deed restrictions, recorded pursuant to the former Sections 25229, 25230,  
39 and 25398.7, as those sections read prior to the effective date of this article, and  
40 Sections 25202.5, 25221, and ~~25355.5~~. 69055. The list shall, at a minimum, provide  
41 the street address, or, if a street address is not available, an equivalent description  
42 of location for a rural location or the latitude and longitude of each property. The

1 department shall update the list as new deed restrictions are recorded. The  
2 department shall make the list available to the public, upon request, and shall make  
3 the list available on the department's ~~Internet Web site~~. internet website. The list  
4 shall also be incorporated into the list of sites compiled pursuant to Section 65962.5  
5 of the Government Code.

6 **Comment.** Section 25220 is amended to update cross-references in accordance with the  
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
8 the Health and Safety Code.

9 This section is also amended to make a technical change.

10 **Note.** Section 25220 cross-refers to Section 25355.5 as a section authorizing imposition of a land  
11 use restriction. Section 25355.5 has been proposed for recodification as multiple sections. Of the  
12 proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land use  
13 restrictions. For this reason, the cross-references to Section 25355.5 have been updated to refer to  
14 Section 69055.

15 **Absent comment, this proposed cross-reference update will be presumed correct.**

16 **§ 25224 (amended). Application for removal of land use restriction**

17 SEC. \_\_\_. Section 25224 of the Health and Safety Code is amended to read:

18 25224. (a) A person may apply to the department to remove a land use restriction  
19 imposed by the department on the grounds that the waste no longer creates a  
20 significant existing or potential hazard to present or future public health or safety.  
21 A person shall not make a subsequent application pursuant to this section within 12  
22 months of a final decision on an application by the department. A person applying  
23 to the department pursuant to this section shall pay the department all costs incurred  
24 by the department relating to the application. An application shall contain sufficient  
25 evidence for the department to make a finding upon any or all of the following  
26 grounds:

27 (1) The hazardous waste that caused the land to be restricted or designated has  
28 since been removed or altered in a manner that precludes any significant existing or  
29 potential hazard to present or future public health.

30 (2) New scientific evidence is available since the restriction or designation of the  
31 land or the making of any previous application pursuant to this section, concerning  
32 either of the following:

33 (A) The nature of the hazardous waste that caused the land to be designated.

34 (B) The geology or other physical environmental characteristics of the designated  
35 land.

36 (b) An aggrieved person may appeal a determination of the department made  
37 pursuant to subdivision (a) by submitting a request for a hearing to the director. The  
38 request shall be mailed by certified mail not later than 30 days after the date of the  
39 mailing of the department's decision on the application.

40 (c) Upon receipt of a timely appeal, the director shall give notice of a hearing  
41 pursuant to the procedures set forth in this article.

42 (d) The department shall record within 10 days any new and final determination  
43 made by the department pursuant to this section as provided in Section 25225.

1 (e) A determination made by the department, after a hearing held pursuant to this  
2 section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil  
3 Procedure and shall be upheld if the court finds that it is supported by substantial  
4 evidence.

5 (f) Whenever there is a final determination pursuant to this section removing a  
6 land use restriction, the easement, covenant, restriction, or servitude imposed on the  
7 land created by Section 25221 or ~~25355.5~~ 69055 or the former Section 25222.1 or  
8 25230 shall automatically terminate. The department shall record or cause to be  
9 recorded within 10 days a termination of the easement, covenant, restriction, or  
10 servitude, which shall particularly describe the real property subject to the easement,  
11 covenant, restriction, or servitude and shall be indexed by the recorder in the grantee  
12 index in the name of the record title owner of the real property subject to the  
13 easement, covenant, restriction, or servitude and in the grantor index in the name of  
14 the department.

15 **Comment.** Section 25224(f) is amended to update cross-references in accordance with the  
16 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
17 the Health and Safety Code.

18 **Note.** Section 25224 cross-refers to Section 25355.5 as a section authorizing imposition of a land  
19 use restriction. Section 25355.5 has been proposed for recodification as multiple sections. Of the  
20 proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land use  
21 restrictions. For this reason, the cross-reference to Section 25355.5 has been updated to refer to  
22 Section 69055.

23 **Absent comment, this proposed cross-reference update will be presumed correct.**

24 **§ 25225 (amended). Recordation of final written instrument**

25 SEC. \_\_. Section 25225 of the Health and Safety Code is amended to read:

26 25225. The department shall record within 10 days any final written instrument  
27 made pursuant to Section 25221 or 25224 with the county recorder of the county in  
28 which the property is located. Any recordation made pursuant to this article or  
29 Section 25202.5 or ~~25355.5~~ 69055 shall include the street address, assessor's parcel  
30 number, or legal description of each parcel affected and the name of the owner  
31 thereof, and the recordation shall be recorded by the recorder in the grantor index in  
32 the name of the record title owner of the real property and in the grantee index in  
33 the name of the department.

34 **Comment.** Section 25225 is amended to update cross-references in accordance with the  
35 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
36 the Health and Safety Code.

37 **Note.** Section 25225 cross-refers to Section 25355.5 as a section authorizing recordation of an  
38 instrument imposing a land use restriction. Section 25355.5 has been proposed for recodification  
39 as multiple sections. Of the proposed sections recodifying Section 25355.5, only proposed Section  
40 69055 addresses land use restrictions. For this reason, the cross-reference to Section 25355.5 has  
41 been updated to refer to Section 69055.

42 **Absent comment, this proposed cross-reference update will be presumed correct.**

1 § 25226 (amended). Assessment of land subject to land use restriction

2 SEC. \_\_\_. Section 25226 of the Health and Safety Code is amended to read:

3 25226. An assessor shall consider a restrictive easement, covenant, restriction, or  
4 servitude adopted pursuant to the former Section 25230, as that section read prior  
5 to the effective date of this article, or Section 25202.5, 25221, or ~~25355.5~~ 69055 as  
6 an enforceable easement, covenant, restriction, or servitude subject to Section 402.1  
7 of the Revenue and Taxation Code and shall appropriately reassess the land, those  
8 of which has been restricted, at the lien date following the adoption or imposition  
9 of the easement, covenant, restriction, or servitude.

10 **Comment.** Section 25226 is amended to update cross-references in accordance with the  
11 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
12 the Health and Safety Code.

13 **Note.** Section 25226 cross-refers to Section 25355.5 as a section authorizing adoption of a land use  
14 restriction. Section 25355.5 has been proposed for recodification as multiple sections. Of the  
15 proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land use  
16 restrictions. For this reason, the cross-reference to Section 25355.5 has been updated to refer to  
17 Section 69055.

18 **Absent comment, this proposed cross-reference update will be presumed correct.**

19 § 25227 (amended). Prohibited activities on land subject to land use restriction

20 SEC. \_\_\_. Section 25227 of the Health and Safety Code is amended to read:

21 25227. A person shall not engage in any of the following on land that is subject  
22 to a recorded land use restriction pursuant to former Section 25229, 25230, or  
23 25398.7, as those sections read on January 1, 2012, or pursuant to Section 25202.5,  
24 25221, or ~~25355.5~~, 69055, unless the person obtains a specific approval in writing  
25 from the department for the land use on the land in question:

26 (a) A new use of the land, other than the use, modification, or expansion of an  
27 existing industrial or manufacturing facility or complex on land that is owned by, or  
28 held for the beneficial use of, the facility or complex on or before January 1, 1981.

29 (b) Subdivision of the land, as that term is used in Division 2 (commencing with  
30 Section 66410) of Title 7 of the Government Code, except that this subdivision does  
31 not prevent the division of a parcel of land so as to divide that portion of the parcel  
32 that contains hazardous materials, as defined in subdivision (d) of Section 25260,  
33 from other portions of that parcel.

34 (c) Construction or placement of a building or structure on the land that is intended  
35 for use as any of the following, or the new use of an existing structure for the purpose  
36 of serving as any of the following:

37 (1)(A) Except as provided in subparagraph (B), a residence, including a  
38 mobilehome or factory built housing constructed or installed for use as permanently  
39 occupied human habitation.

40 (B) The addition of rooms or living space to an existing single-family dwelling or  
41 other minor repairs or improvements to residential property that do not change the  
42 use of the property, increase the population density, or impair the effectiveness of a

1 response action, shall not constitute construction or placement of a building or  
2 structure for the purposes of subparagraph (A).

3 (2) A hospital for humans.

4 (3) A school for persons under 21 years of age.

5 (4) A day care center for children.

6 (5) A permanently occupied human habitation, other than those used for industrial  
7 purposes.

8 **Comment.** Section 25227 is amended to update cross-references in accordance with the  
9 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
10 the Health and Safety Code.

11 **Note.** Section 25227 cross-refers to Section 25355.5 as a section authorizing imposition of a land  
12 use restriction. Section 25355.5 has been proposed for recodification as multiple sections. Of the  
13 proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land use  
14 restrictions. For this reason, the cross-reference to Section 25355.5 has been updated to refer to  
15 Section 69055.

16 **Absent comment, this proposed cross-reference update will be presumed correct.**

17 **§ 25242 (amended). Unauthorized disposal of hazardous waste**

18 SEC. \_\_. Section 25242 of the Health and Safety Code is amended to read:

19 25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee,  
20 knows or has probable cause to believe that a disposal of hazardous waste which is  
21 not authorized pursuant to this chapter has occurred on, under, or into the land which  
22 the city, county, or state agency owns or leases shall notify the department. Upon  
23 receiving that notice, the department shall determine if there has been a disposal of  
24 hazardous waste which is not authorized pursuant to this chapter.

25 (b) If the department determines that there has been a disposal of hazardous waste  
26 which is not authorized pursuant to this chapter, the department shall do all of the  
27 following:

28 (1) Conduct, or arrange for the conducting of, tests to determine the general  
29 chemical and mineral composition of the hazardous waste.

30 (2) Require the city, county, or state agency which submitted the notice pursuant  
31 to subdivision (a) to prepare a hazardous waste management plan specifying those  
32 removal or remedial actions, as defined in Sections ~~25322 and 25323~~, 68125 and  
33 68135, which are needed to be taken concerning the hazardous waste. The  
34 hazardous waste management plan shall provide for the protection of human health  
35 and the environment and minimize or eliminate the escape of hazardous waste  
36 constituents, leachate, contaminated rainfall, and waste decomposition products into  
37 ground and surface waters and into the atmosphere.

38 (3) Send notice of the department's findings made pursuant to paragraph (1) to  
39 the county in which the land is located, the city, if any, in which the land is located,  
40 the owner of the property, and residents living within 2,000 feet of the property line  
41 of the land on which the hazardous wastes were disposed. The department shall also  
42 post signs in the vicinity of the land which contain this information and are visible  
43 to the public. The department may also provide this notice to other persons, or post

1 these signs in any other area, to protect the public health and safety or to provide the  
2 maximum opportunity for comment from the potentially affected public.

3 (4) Conduct public hearings on the proposed hazardous waste management plan  
4 during those times and at those places which are convenient to the affected public.  
5 These hearings shall be conducted even if the hazardous waste management plan  
6 provides that no removal or remedial actions will be taken. The department shall  
7 publish notice of these hearings in newspapers of general circulation, as defined in  
8 Section 6000 of the Government Code, and shall use all other reasonable means to  
9 publicize these hearings.

10 (5) Take all actions required by Section ~~25358.7~~ 68930 concerning any proposed  
11 removal or remedial actions.

12 (6) Take any other actions authorized by this chapter or ~~Chapter 6.8 (commencing~~  
13 ~~with Section 25300)~~ Part 2 (commencing with Section 68000) of Division 45  
14 to carry out the legislative intent specified in Section 25242.1.

15 (c) The city, county, or state agency which is required to prepare a hazardous  
16 waste management plan pursuant to paragraph (2) of subdivision (b) shall submit  
17 the proposed hazardous waste management plan for approval to the department or  
18 a California Regional Water Quality Control Board, whichever the department  
19 determines is appropriate. A city or state agency shall submit the plan to the county  
20 in which the land is located, and a county or state agency shall submit the plan to  
21 the city, if any, in which the land is located, for comments and recommendations.  
22 The city, county, or state agency shall also consider whether to incorporate any  
23 changes in the plan which are recommended by the county, city, and the public.

24 **Comment.** Section 25242(b)(2), (b)(5), and (b)(6) are amended to update cross-references in  
25 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
26 25300) of Division 20 of the Health and Safety Code.

27 **§ 25250.54 (amended). Extension of deadline**

28 SEC. \_\_. Section 25250.54 of the Health and Safety Code is amended to read:

29 25250.54. (a)(1) On and after January 1, 2019, a manufacturer may apply to the  
30 department for a one-year, two-year, or three-year extension of the January 1, 2025,  
31 deadline established in Section 25250.53, except as provided in subdivision (h).

32 (2) An extension application submitted pursuant to this section shall be submitted  
33 based on vehicle model, class, platform, or other vehicle-based category, and not on  
34 the basis of the brake friction material formulation.

35 (3) The application shall be accompanied by documentation that will allow the  
36 advisory committee to make a recommendation pursuant to subdivisions (e) and (f).

37 (4) The documentation shall include a scientifically sound quantitative estimate  
38 of the quantity of copper that would be emitted if the extension is granted, including  
39 a description of the assumptions used in arriving at that estimate.

40 (b) No more than 30 days after receipt of an application for an extension pursuant  
41 to subdivision (a), the department shall do all of the following:

1 (1) Post a notice of receipt on the department’s ~~Internet Web site~~ internet website  
2 that includes the vehicle model, class, platform, or other vehicle-based category,  
3 whether the brake friction material is intended for use in original equipment or  
4 replacement parts, and the quantity of copper that would be emitted if the extension  
5 is granted.

6 (2) Consult with the board and the State Air Resources Board.

7 (3) Solicit comment from the public and from scientific and vehicle engineering  
8 experts on the availability of generally affordable compliant brake friction materials,  
9 their safety and performance characteristics, and the feasibility of brake pad copper  
10 emissions reduction through means other than friction material reformulation.

11 (c)(1) In consultation with the board, the department shall determine if sufficient  
12 documentation has been presented upon which to base a decision. If the department  
13 determines that further documentation is needed, it shall deliver a detailed request  
14 for further documentation to the applicant.

15 (2) Not later than 30 days after receipt of the application for an extension pursuant  
16 to subdivision (a), the department shall forward the application to the advisory  
17 committee for the purpose of the advisory committee making a recommendation  
18 pursuant to subdivisions (e) and (f).

19 (d)(1) In considering any application for an extension, the advisory committee  
20 shall consider all of the documentation supplied by the applicant pursuant to  
21 subdivision (a).

22 (2) The advisory committee may request, no later than 75 days after receipt of the  
23 application from the department pursuant to subdivision (c), further documentation  
24 from the applicant.

25 (3) The advisory committee shall hold at least one public hearing at which it shall  
26 accept and consider comments from the public on each category of application. The  
27 advisory committee meetings shall be open to the public and are subject to the  
28 Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of  
29 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

30 (e)(1) The advisory committee shall recommend to the secretary that the extension  
31 be approved if the advisory committee determines that there are no brake friction  
32 materials that are safe and available for individual or multiple vehicle models,  
33 classes, platforms, or other vehicle-based categories identified in the application.

34 (2) The advisory committee shall recommend to the secretary that the extension  
35 not be approved if the advisory committee determines that alternative brake friction  
36 materials are safe and available for individual or multiple vehicle models, classes,  
37 platforms, or other vehicle-based categories identified in the application.

38 (3) For purposes of this section, “safe and available” shall mean all of the  
39 following:

40 (A) The brake system for which the alternative brake friction material is  
41 manufactured meets applicable federal safety standards, or if no federal standard  
42 exists, a widely accepted safety standard.

1 (B) Acceptable alternative brake friction materials are commercially available for  
2 the individual or multiple vehicles, classes, platforms, or vehicle-based categories  
3 identified in the application.

4 (C) Adequate industry testing and production capacity exists to supply the  
5 alternative brake friction materials for use on the individual or multiple vehicles,  
6 classes, platforms, or vehicle-based categories identified in the application.

7 (D) The alternative brake friction material is technically feasible for use on the  
8 individual or multiple vehicles, classes, platforms, or vehicle-based categories  
9 identified in the application.

10 (E) The alternative brake friction materials meet customer performance  
11 expectations, including noise, wear, vibration, and durability for the individual or  
12 multiple vehicles, classes, platforms, or vehicle-based categories identified in the  
13 application.

14 (F) The alternative acceptable brake friction material is economically feasible  
15 with respect to the industry and the cost to the consumer for the individual or  
16 multiple vehicles, classes, platforms, or vehicle-based categories identified in the  
17 application.

18 (4) The advisory committee shall provide relevant data to the department and the  
19 board concerning the potential impacts of the extension on California watersheds  
20 for purposes of the report required pursuant to Section 25250.65.

21 (f)(1) No sooner than 60 days and no later than 120 days after the department  
22 solicits comments pursuant to paragraph (3) of subdivision (b), the advisory  
23 committee shall make a recommendation to the secretary in accordance with  
24 subdivisions (d) and (e) as to whether the application for extension should be  
25 approved or not approved.

26 (2) The recommendation of the advisory committee that the secretary approve or  
27 not approve the application for extension shall be accompanied by documentation  
28 of the basis for the recommendation.

29 (g)(1) The secretary shall make available the recommendation of the advisory  
30 committee and the accompanying documentation for public review and comment  
31 for 60 days following receipt of the recommendation from the advisory committee.

32 (2) The secretary shall consider public comments on the advisory committee's  
33 recommendation and issue a final decision on the application for extension no later  
34 than 45 days after the conclusion of the 60-day comment period.

35 (3) In making the determination whether to approve or disapprove the extension,  
36 the secretary shall rely upon the recommendations made by the advisory committee  
37 pursuant to subdivision (f).

38 (4) If the secretary does not follow the recommendation of the advisory committee  
39 made pursuant to subdivision (f), ~~he or she~~ the secretary shall explain in writing the  
40 basis of ~~his or her~~ the secretary's decision.

41 (h)(1) On or before December 31, 2029, a manufacturer with an approved  
42 extension of the January 1, 2025, deadline established in Section 25250.53, may

1 reapply to the department for additional two-year extensions from the deadline in  
2 accordance with a schedule that may be established by the department.

3 (2) Except as provided in subdivision (i), a manufacturer may not apply on or after  
4 January 1, 2030, for an extension of the January 1, 2025, deadline established in  
5 Section 25250.53.

6 (3) The department shall comply with all of the requirements of this section when  
7 granting an additional extension of the January 1, 2025, deadline pursuant to this  
8 subdivision.

9 (i)(1) On and after January 1, 2030, a manufacturer of vehicle brake friction  
10 materials to be used on heavy-duty vehicles with an approved extension of the  
11 January 1, 2025, deadline established in Section 25250.53, may reapply to the  
12 department for additional two-year extensions from the deadline established in  
13 Section 25250.53, that results in an extension of that deadline to a date on and after  
14 January 1, 2032.

15 (2) The department shall comply with all of the requirements of this section when  
16 granting an additional extension of the January 1, 2025, deadline pursuant to this  
17 subdivision.

18 (j) The department shall assess a fee for each application for an extension  
19 sufficient to cover actual costs incurred in implementing this section. The  
20 department may expend the fees collected pursuant to this subdivision, upon  
21 appropriation by the Legislature, for reimbursement for the costs incurred in  
22 implementing this section.

23 (k) When granting an extension pursuant to this section, the department, board,  
24 advisory committee, and secretary shall comply with the requirements of ~~Section~~  
25 ~~25358.2, Article 5 (commencing with Section 68480) of Chapter 3 of Part 2 of~~  
26 Division 45, to ensure the protection of trade secrets, as defined in ~~Section 25358.2-~~  
27 68480.

28 **Comment.** Section 25250.54(k) is amended to update cross-references in accordance with the  
29 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
30 the Health and Safety Code.

31 This section is also amended to eliminate gendered pronouns and make a technical change.

32 **Note.** Section 25250.54 cross-refers to requirements of Section 25358.2 to protect trade secrets as  
33 defined in that section. Section 25358.2 has been proposed for recodification as multiple sections,  
34 which comprise an article. The cross-reference to Section 25358.2 for requirements to protect trade  
35 secrets has been updated to refer to the article as a whole, while the cross-reference to Section  
36 25358.2 for the definition of trade secrets has been updated to refer only to the proposed section  
37 continuing that definition (Section 68480).

38 **Absent comment, the proposed cross-reference update will be presumed correct.**

39 **§ 25260 (amended). Definitions**

40 SEC. \_\_. Section 25260 of the Health and Safety Code is amended to read:

41 25260. The definitions set forth in this section shall govern the interpretation of  
42 this chapter. Unless the context requires otherwise and except as provided in this  
43 chapter, the definitions contained in ~~Article 2 (commencing with Section 25310) of~~

1 ~~Chapter 6.8~~ Article 3 (commencing with Section 68035) of Chapter 1 of Part 2 of  
2 Division 45 shall apply to the terms used in this chapter.

3 (a) “Administering agency” means the agency designated by the committee  
4 pursuant to Section 25262.

5 (b) “Advisory team” means the team convened by the committee pursuant to  
6 Section 25263.

7 (c) “Agency” means any city, county, district, commission, the state, or any  
8 department, agency, or political subdivision thereof, that has jurisdiction under a  
9 state or local law, ordinance, or regulation to supervise, oversee, or approve a site  
10 investigation and a remedial action at a hazardous materials release site.

11 (d) “Hazardous material” means a substance or waste that, because of its physical,  
12 chemical, or other characteristics, may pose a risk of endangering human health or  
13 safety or of degrading the environment. “Hazardous material” includes, but is not  
14 limited to, all of the following:

15 (1) A hazardous substance, as defined in Section 25281 or ~~25316~~, subdivision (a)  
16 of Section 68075.

17 (2) A hazardous waste, as defined in Section 25117.

18 (3) A waste, as defined in Section 470 or as defined in Section 13050 of the Water  
19 Code.

20 (e) “Hazardous materials release site” or “site” means any area, location, or  
21 facility where a hazardous material has been released or threatens to be released into  
22 the environment. “Hazardous materials release site” does not include a site subject  
23 to a response and cleanup operation under Chapter 7.4 (commencing with Section  
24 8670.1) of Division 1 of Title 2 of the Government Code or a corrective action under  
25 Part 6 (commencing with Section 46000) of Division 30 of the Public Resources  
26 Code.

27 (f) “Committee” means the Site Designation Committee created by Section  
28 25261.

29 (g) “Remedial action” means actions required by state or local laws, ordinances,  
30 or regulations that are necessary to prevent, minimize, or mitigate damage that may  
31 otherwise result from a release or threatened release of a hazardous material, and  
32 that are consistent with a permanent remedy for a hazardous materials release.  
33 “Remedial action” includes, but is not limited to, the cleanup or removal of released  
34 hazardous materials from the environment, monitoring, testing and analysis of the  
35 site, site operation and maintenance, and the placing of conditions, limitations, or  
36 restrictions on the uses of the site after remedial action has been completed.

37 (h) “Responsible party” means any person, except for an independent contractor,  
38 who agrees to carry out a site investigation and remedial action at a hazardous  
39 materials release site for one of the following reasons:

40 (1) The person is liable under a state or local law, ordinance, or regulation for the  
41 site investigation or remedial action.

42 (2) The site investigation or remedial action is required by a state or local law,  
43 ordinance, or regulation because of a hazardous materials release.

1 (i) “Site investigation” means those actions that are necessary to determine the  
2 full extent of a release or threatened release of a hazardous material at a hazardous  
3 materials release site, identify the public health and safety or environmental threat  
4 posed by the release or threatened release, collect data on possible remedies, and  
5 otherwise evaluate the hazardous materials release site for the purpose of  
6 implementing remedial action.

7 **Comment.** Section 25260 is amended to update cross-references in accordance with the  
8 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
9 the Health and Safety Code.

10 **§ 25262 (amended). Designation of administering agency for site**

11 SEC. \_\_. Section 25262 of the Health and Safety Code is amended to read:

12 25262. (a) A responsible party for a hazardous materials release site may request  
13 the committee at any time to designate an administering agency to oversee a site  
14 investigation and remedial action at the site. The committee shall designate an  
15 administering agency as responsible for the site within 45 days of the date the  
16 request is received. A request to designate an administering agency may be denied  
17 only if the committee makes one of the following findings:

18 (1) No single agency in state or local government has the expertise needed to  
19 adequately oversee a site investigation and remedial action at the site.

20 (2) Designating an administering agency will have the effect of reversing a  
21 regulatory or enforcement action initiated by an agency that has jurisdiction over  
22 the site, a facility on the site, or an activity at the site.

23 (3) Designating an administering agency will prevent a regulatory or enforcement  
24 action required by federal law or regulations.

25 (4) The administering agency and the responsible party are local agencies formed,  
26 in whole or in part, by the same political subdivision.

27 (b) A responsible party who requests the designation of an administering agency  
28 for a hazardous materials release site shall provide the committee with a brief  
29 description of the site, an analysis of the known or suspected nature of the release  
30 or threatened release that is the subject of required site investigation or remedial  
31 action, a description of the type of facility from which the release occurred or the  
32 type of activity that caused the release, a specification of the regulatory or  
33 enforcement actions that have been taken, or are pending, with respect to the release,  
34 and a statement of which agency the responsible party believes should be designated  
35 as administering agency for the site.

36 (c)(1) The committee shall take all of the following factors into account in  
37 determining which agency to designate as administering agency for a site:

38 (A) The type of release that is the subject of site investigation and remedial action.

39 (B) The nature of the threat that the release poses to human health and safety or  
40 to the environment.

1 (C) The source of the release, the type of facility or activity from which the release  
2 occurred, the regulatory programs that govern the facility or activity involved, and  
3 the agency or agencies that administer those regulatory programs.

4 (D) The regulatory history of the site, the types of regulatory actions or  
5 enforcement actions that have been taken with respect to the site or the facility or  
6 activity from which the release occurred, and the experience and involvement that  
7 various agencies have had with the site.

8 (E) The capabilities and expertise of the agencies that are candidates for  
9 designation as the administering agency for the site and the degree to which those  
10 capabilities and that expertise are applicable to the type of release at the site, the  
11 nature of the threat that the release poses to health and safety or the environment  
12 and the probable remedial measures that will be required.

13 (2) After weighing the factors described in paragraph (1) as they apply to the site,  
14 the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D)  
15 as guidelines for designating the administering agency. If more than one of the  
16 criteria apply to the site, the committee shall use its best judgment, taking into  
17 account the known facts concerning the hazardous materials release at the site and  
18 its regulatory history, in determining which agency may best serve as the  
19 administering agency. The criteria are as follows:

20 (A) The administering agency shall be the Department of Toxic Substances  
21 Control if one of the following applies:

22 (i) The department has issued an order, or otherwise initiated action, with respect  
23 to the release at the site pursuant to ~~Section 25355, 25355.5, or 25358.3~~. Article 1  
24 (commencing with Section 68650) of Chapter 4 of, or Article 10 (commencing with  
25 Section 69130) of Chapter 5 of, Part 2 of Division 45 or Section 68870, 69055,  
26 69060, or 69065.

27 (ii) The department has issued an order for corrective action at the site pursuant  
28 to Section 25187.

29 (iii) The source of the release is a facility or hazardous waste management unit or  
30 an activity that is, or was, regulated by the department pursuant to Chapter 6.5  
31 (commencing with Section 25100).

32 (iv) The department is conducting, or has conducted, oversight of the site  
33 investigation and remedial action at the site at the request of the responsible party.

34 (B) The administering agency shall be the California regional water quality  
35 control board for the region in which the site is located, if one of the following  
36 applies:

37 (i) The California regional water quality control board has issued a cease and  
38 desist order pursuant to Section 13301, or a cleanup and abatement order pursuant  
39 to Section 13304 of the Water Code in connection with the release at the site.

40 (ii) The source of the release is a facility or an activity that is subject to waste  
41 discharge requirements issued by the California regional water quality control board  
42 pursuant to Section 13263 of the Water Code or that is regulated by the California  
43 regional water quality control board pursuant to Article 5.6 (commencing with

1 Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter  
2 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

3 (iii) The California regional water quality control board has jurisdiction over the  
4 site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the  
5 Water Code.

6 (C) The administering agency shall be the Department of Fish and Game Wildlife  
7 if the release has polluted or contaminated the waters of the state and the department  
8 has taken action against the responsible party pursuant to Section 2014 or 12015 of,  
9 or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6  
10 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive  
11 Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C.  
12 Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33  
13 U.S.C. Sec. 1321).

14 (D) The administering agency shall be a local agency if any one of the following  
15 circumstances is applicable:

16 (i) The source of the release at the site is an underground storage tank, as defined  
17 in subdivision (y) of Section 25281, the local agency is the agency described in  
18 subdivision (i) of Section 25281, and there is no evidence of any extensive  
19 groundwater contamination at the site.

20 (ii) The local agency has accepted responsibility for overseeing the site  
21 investigation or remedial action at the site and a state agency is not involved.

22 (iii) The local agency has agreed to oversee the site investigation or remedial  
23 action at the site and is certified, or has been approved, by a state agency to conduct  
24 that oversight.

25 (d) A responsible party for a hazardous materials release site may request the  
26 designation of an administering agency for the site pursuant to this section only  
27 once. The action of the committee on the request is a final action and is not subject  
28 to further administrative or judicial review.

29 **Comment.** Section 25262(c)(2)(A)(i) is amended to update cross-references in accordance with  
30 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
31 of the Health and Safety Code.

32 This section is also amended to correct a reference to the “Department of Fish and Game” to  
33 refer instead to the “Department of Fish and Wildlife.” See Fish and Game Code § 700.

34 **Notes. (1)** Section 25262(c)(2)(A)(i) cross-refers to an order or initiation of action pursuant to  
35 Section 25355. Section 25355 has been proposed for recodification as multiple provisions  
36 (proposed Sections 68850, 69005, 69130(a), and 69135). In updating this cross-reference, it  
37 appeared that proposed Sections 68850 and 69005 recodify parts of Section 25355 that are not  
38 relevant to this cross-reference (sections address Governor’s role in coordinating response actions  
39 for the state and authority to enter voluntary agreements for petroleum release sites, respectively).  
40 For this reason, the proposed cross-reference update does not include references to these sections.

41 **The Commission welcomes comment on this proposed cross-reference update.**

42 **(2)** Section 25262 also cross-refers to an order or initiation of action pursuant to Section 25358.3.  
43 Section 25358.3 has been proposed for recodification, along with a penalty provision, as an article.  
44 The inclusion of the penalty provision (proposed Section 68665) in the cross-reference would not  
45 appear to have a substantive effect. For this reason, the proposed cross-reference update would

1 refer to the article as a whole (proposed Article 1 of Chapter 4 of Part 2 of Division 45). **Absent**  
2 **comment, this proposed cross-reference update will be presumed correct.**

3 **§ 25269.2 (amended). Recovery of oversight costs**

4 SEC. \_\_. Section 25269.2 of the Health and Safety Code is amended to read:

5 25269.2. (a) The department shall comply with this chapter when recovering  
6 oversight costs for corrective action pursuant to Chapter 6.5 (commencing with  
7 Section 25100), for removal or remedial action pursuant to ~~Chapter 6.8~~  
8 ~~(commencing with Section 25300)~~, Part 2 (commencing with Section 68000) of  
9 Division 45, and for response actions pursuant to former Chapter 6.85 (commencing  
10 with Section 25396).

11 (b) The department shall develop a concise statement of its cost recovery policies  
12 and billing procedures, including dispute resolution procedures and availability of  
13 program guidance and policies, and distribute the statement to all responsible  
14 parties.

15 **Comment.** Section 25269.2 is amended to update cross-references in accordance with the  
16 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
17 the Health and Safety Code.

18 **§ 25281 (amended). Definitions**

19 SEC. \_\_. Section 25281 of the Health and Safety Code is amended to read:

20 25281. For purposes of this chapter and unless otherwise expressly provided, the  
21 following definitions apply:

22 (a) “Automatic line leak detector” means any method of leak detection, as  
23 determined in regulations adopted by the board, that alerts the owner or operator of  
24 an underground storage tank to the presence of a leak. “Automatic line leak  
25 detector” includes, but is not limited to, any device or mechanism that alerts the  
26 owner or operator of an underground storage tank to the presence of a leak by  
27 restricting or shutting off the flow of a hazardous substance through piping, or by  
28 triggering an audible or visual alarm, and that detects leaks of three gallons or more  
29 per hour at 10 pounds per square inch line pressure within one hour.

30 (b) “Board” means the State Water Resources Control Board. “Regional board”  
31 means a California regional water quality control board.

32 (c) “Compatible” means the ability of two or more substances to maintain their  
33 respective physical and chemical properties upon contact with one another for the  
34 design life of the tank system under conditions likely to be encountered in the tank  
35 system.

36 (d)(1) “Certified Unified Program Agency” or “CUPA” means the agency  
37 certified by the Secretary for Environmental Protection to implement the unified  
38 program specified in Chapter 6.11 (commencing with Section 25404) within a  
39 jurisdiction.

40 (2) “Participating Agency” or “PA” means an agency that has a written agreement  
41 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by

1 the secretary to implement or enforce the unified program element specified in  
2 paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections  
3 25404.1 and 25404.2.

4 (3) “Unified Program Agency” or “UPA” means the CUPA, or its participating  
5 agencies to the extent each PA has been designated by the CUPA, pursuant to a  
6 written agreement, to implement or enforce the unified program element specified  
7 in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a  
8 UPA has the responsibility and authority, to the extent provided by this chapter and  
9 Sections 25404.1 to 25404.2, inclusive, to implement and enforce only those  
10 requirements of this chapter listed in paragraph (3) of subdivision (c) of Section  
11 25404 and the regulations adopted to implement those requirements. Except as  
12 provided in Section 25296.09, after a CUPA has been certified by the secretary, the  
13 UPA shall be the only local agency authorized to enforce the requirements of this  
14 chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the  
15 jurisdiction of the CUPA. This paragraph shall not be construed to limit the  
16 authority or responsibility granted to the board and the regional boards by this  
17 chapter to implement and enforce this chapter and the regulations adopted pursuant  
18 to this chapter.

19 (e) “Department” means the Department of Toxic Substances Control.

20 (f) “Facility” means any one, or combination of, underground storage tanks used  
21 by a single business entity at a single location or site.

22 (g) “Federal act” means Subchapter IX (commencing with Section 6991) of  
23 Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and  
24 Solid Waste Amendments of 1984 (Public Law 98-616), or as it may subsequently  
25 be amended or supplemented.

26 (h) “Hazardous substance” means either of the following:

27 (1) All of the following liquid and solid substances, unless the department, in  
28 consultation with the board, determines that the substance could not adversely affect  
29 the quality of the waters of the state:

30 (A) Substances on the list prepared by the Director of Industrial Relations  
31 pursuant to Section 6382 of the Labor Code.

32 (B) Hazardous substances, as defined in ~~Section 25316~~: subdivision (a) of Section  
33 68075.

34 (C) Any substance or material that is classified by the National Fire Protection  
35 Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class  
36 III-A combustible liquid.

37 (2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title  
38 42 of the United States Code, as that section reads on January 1, 2012, or as it may  
39 subsequently be amended or supplemented.

40 (i) “Local agency” means one of the following, as specified in subdivision (b) of  
41 Section 25283:

42 (1) The unified program agency.

43 (2) Before July 1, 2013, a city or county.

1 (3) On and after July 1, 2013, a city or county certified by the board to implement  
2 the local oversight program pursuant to Section 25297.01.

3 (j) “Operator” means any person in control of, or having daily responsibility for,  
4 the daily operation of an underground storage tank system.

5 (k) “Owner” means the owner of an underground storage tank.

6 (l) “Person” means an individual, trust, firm, joint stock company, corporation,  
7 including a government corporation, partnership, limited liability company, or  
8 association. “Person” also includes any city, county, district, the state, another state  
9 of the United States, any department or agency of this state or another state, or the  
10 United States to the extent authorized by federal law.

11 (m) “Pipe” means any pipeline or system of pipelines that is used in connection  
12 with the storage of hazardous substances and that is not intended to transport  
13 hazardous substances in interstate or intrastate commerce or to transfer hazardous  
14 materials in bulk to or from a marine vessel.

15 (n) “Primary containment” means the first level of containment, such as the  
16 portion of a tank that comes into immediate contact on its inner surface with the  
17 hazardous substance being contained.

18 (o) “Product tight” means impervious to the substance that is contained, or is to  
19 be contained, so as to prevent the seepage of the substance from the containment.

20 (p) “Release” means any spilling, leaking, emitting, discharging, escaping,  
21 leaching, or disposing from an underground storage tank into or on the waters of the  
22 state, the land, or the subsurface soils.

23 (q) “Secondary containment” means the level of containment external to, and  
24 separate from, the primary containment.

25 (r) “Single walled” means construction with walls made of only one thickness of  
26 material. For the purposes of this chapter, laminated, coated, or clad materials are  
27 considered single walled.

28 (s) “Special inspector” means a professional engineer, registered pursuant to  
29 Chapter 7 (commencing with Section 6700) of Division 3 of the Business and  
30 Professions Code, who is qualified to attest, at a minimum, to structural soundness,  
31 seismic safety, the compatibility of construction materials with contents, cathodic  
32 protection, and the mechanical compatibility of the structural elements of  
33 underground storage tanks.

34 (t)(1) “Storage” or “store” means the containment, handling, or treatment of  
35 hazardous substances, either on a temporary basis or for a period of years.

36 (2) “Storage” or “store” does not include the storage of hazardous wastes in an  
37 underground storage tank if the person operating the tank has been issued a  
38 hazardous waste facilities permit by the department pursuant to Section 25200 or  
39 25201.6 or granted interim status under Section 25200.5.

40 (3) “Storage” or “store” does not include the storage of hazardous wastes in an  
41 underground storage tank if all of the following apply:

1 (A) The facility has been issued a unified program facility permit pursuant to  
2 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous  
3 waste in a tank.

4 (B) The tank is located in an underground area, as defined in Section 280.12 of  
5 Title 40 of the Code of Federal Regulations.

6 (C) The tank is subject to Chapter 6.67 (commencing with Section 25270).

7 (D) The tank complies with the hazardous waste tank standards pursuant to Article  
8 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California  
9 Code of Regulations.

10 (4) “Storage” or “store” does not include the storage of hazardous wastes in an  
11 underground storage tank if all of the following apply:

12 (A) The facility has been issued a unified program facility permit pursuant to  
13 Section 25404.2 for generation, treatment, accumulation, or storage of hazardous  
14 waste in a tank.

15 (B) The tank is located in a structure that is at least 10 percent below the ground  
16 surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.

17 (C) The structure in which the tank is located, at a minimum, provides for  
18 secondary containment of the contents of the tank, piping, and ancillary equipment,  
19 until cleanup occurs.

20 (D) The tank complies with the hazardous waste tank standards pursuant to Article  
21 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California  
22 Code of Regulations.

23 (u) “Tank” means a stationary device designed to contain an accumulation of  
24 hazardous substances which is constructed primarily of nonearthen materials,  
25 including, but not limited to, wood, concrete, steel, or plastic that provides structural  
26 support.

27 (v) “Tank integrity test” means a test method capable of detecting an unauthorized  
28 release from an underground storage tank consistent with the minimum standards  
29 adopted by the board.

30 (w) “Tank tester” means an individual who performs tank integrity tests on  
31 underground storage tanks.

32 (x) “Unauthorized release” means any release of any hazardous substance that  
33 does not conform to this chapter, including an unauthorized release specified in  
34 Section 25295.5.

35 (y)(1) “Underground storage tank” means any one or combination of tanks,  
36 including pipes connected thereto, that is used for the storage of hazardous  
37 substances and that is substantially or totally beneath the surface of the ground.  
38 “Underground storage tank” does not include any of the following:

39 (A) A tank with a capacity of 1,100 gallons or less that is located on a farm and  
40 that stores motor vehicle fuel used primarily for agricultural purposes and not for  
41 resale.

1 (B) A tank that is located on a farm or at the residence of a person, that has a  
2 capacity of 1,100 gallons or less, and that stores home heating oil for consumptive  
3 use on the premises where stored.

4 (C) Structures, such as sumps, separators, storm drains, catch basins, oil field  
5 gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars,  
6 separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a  
7 part of a monitoring system required under Section 25290.1, 25290.2, 25291, or  
8 25292 and sumps or other structures defined as underground storage tanks under the  
9 federal act are not exempted by this subparagraph.

10 (D) A tank holding hydraulic fluid for a closed loop mechanical system that uses  
11 compressed air or hydraulic fluid to operate lifts, elevators, and other similar  
12 devices.

13 (E) A tank in an underground area, as defined in Section 25270.2, and associated  
14 piping, that is subject to Chapter 6.67 (commencing with Section 25270).

15 (2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be  
16 regulated by the board and any regional board pursuant to the Porter-Cologne Water  
17 Quality Control Act (Division 7 (commencing with Section 13000) of the Water  
18 Code) to ensure that they do not pose a threat to water quality.

19 (z) “Underground tank system” or “tank system” means an underground storage  
20 tank, connected piping, ancillary equipment, and containment system, if any.

21 (aa)(1) “Unified program facility” means all contiguous land and structures, other  
22 appurtenances, and improvements on the land that are subject to the requirements  
23 of paragraph (3) of subdivision (c) of Section 25404.

24 (2) “Unified program facility permit” means a permit issued pursuant to Chapter  
25 6.11 (commencing with Section 25404), and that encompasses the permitting  
26 requirements of Section 25284.

27 (3) “Permit” means a permit issued pursuant to Section 25284 or a unified  
28 program facility permit as defined in paragraph (2).

29 **Comment.** Section 25281(h)(1)(B) is amended to update cross-references in accordance with  
30 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
31 of the Health and Safety Code.

32 **§ 25297 (amended). Request by local agency for agency action**

33 SEC. \_\_\_. Section 25297 of the Health and Safety Code is amended to read:

34 25297. The local agency may request the following agencies to utilize that  
35 agency’s authority to remedy the effects of, and remove, any hazardous substance  
36 which has been released from an underground storage tank:

37 (a) The department which may take action pursuant to ~~Chapter 6.8 (commencing~~  
38 ~~with Section 25300) Part 2 (commencing with Section 68000) of Division 45 and,~~  
39 for this purpose, any unauthorized release shall be deemed a release as defined in  
40 ~~Section 25320. subdivision (a) of Section 68105.~~

41 (b) A regional water quality control board may take action pursuant to Division 7  
42 (commencing with Section 13000) of the Water Code and, for this purpose, the

1 discharged hazardous substance shall be deemed a waste as defined in subdivision  
2 (d) of Section 13050.

3 **Comment.** Section 25297 is amended to update cross-references in accordance with the  
4 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
5 the Health and Safety Code.

6 **§ 25297.01 (amended). Local oversight program**

7 SEC. \_\_. Section 25297.01 of the Health and Safety Code is amended to read:

8 25297.01. (a) In addition to the authority granted to the board pursuant to Division  
9 7 (commencing with Section 13000) of the Water Code and to the department  
10 pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~, Part 2 (commencing  
11 with Section 68000) of Division 45, the board, in cooperation with the department,  
12 shall develop and implement a local oversight program for the abatement of, and  
13 oversight of the abatement of, unauthorized releases of hazardous substances from  
14 underground storage tanks by a local agency certified pursuant to this section.

15 (b) On and after July 1, 2013, only a city or county certified pursuant to  
16 subdivision (c) may implement a local oversight program. The board may enter into  
17 an agreement pursuant to Section 25297.1 with a certified city or county to  
18 implement the oversight program.

19 (c) The board may certify a city or county if the board determines that the city or  
20 county is qualified to oversee or perform the abatement of unauthorized releases of  
21 hazardous substances from underground storage tanks. The board shall consider, as  
22 criteria for determining whether a city or county is qualified, at a minimum, all of  
23 the following factors:

24 (1) Adequacy of the technical expertise possessed by the city or county.

25 (2) Adequacy of staff resources.

26 (3) Adequacy of budget resources and funding mechanisms.

27 (4) Training requirements.

28 (5) Past performance in implementing and enforcing corrective action  
29 requirements.

30 (6) Recordkeeping and accounting systems.

31 (d) The board shall adopt procedures and criteria for certifying and withdrawing  
32 certification from cities and counties pursuant to this section. The adoption of these  
33 procedures and criteria shall not be considered as regulations subject to, and shall  
34 be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of  
35 Division 3 of Title 2 of the Government Code.

36 (e) If the board does not, by July 1, 2013, certify a city or county that has been  
37 implementing a local oversight program pursuant to an agreement entered into with  
38 the board on or before January 1, 2013, the board shall assign the cases from that  
39 city or county to the appropriate regional board or to a city or county that is certified  
40 by the board. An order or directive issued by that uncertified city or county on or  
41 before July 1, 2013, shall remain in effect and may be enforced by the regional board  
42 or certified city or county that receives the case.

1 (f) The board shall review, at least once every three years, the ability of the  
2 certified city or county to carry out the local oversight program. When conducting  
3 this review, the board shall consider the certification criteria contained in paragraphs  
4 (1) to (6), inclusive, of subdivision (c) and the criteria adopted pursuant to  
5 subdivision (d). The board may, after conducting the review, withdraw the  
6 certification of the city or county. Upon making this withdrawal, the cases of the  
7 former certified city or county shall be transferred from the city or county and the  
8 orders and directives issued by the former certified city or county shall remain  
9 effective and enforceable in accordance with subdivision (e). The board shall not  
10 make the effective date for the withdrawal of a certification before the expiration  
11 date of the local oversight program agreement entered into between the board and  
12 the certified city or county pursuant to Section 25297.1, unless the certified city or  
13 county fails to comply with the agreement.

14 **Comment.** Section 25297.01(a) is amended to update cross-references in accordance with the  
15 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
16 the Health and Safety Code.

17 **§ 25297.1 (amended). Agreement for implementation of local oversight program**

18 SEC. \_\_. Section 25297.1 of the Health and Safety Code is amended to read:

19 25297.1. (a)(1) For purposes of implementing, pursuant to Section 25297.01, the  
20 local oversight program for the abatement of, and oversight of the abatement of,  
21 unauthorized releases of hazardous substances from underground storage tanks, the  
22 board may enter into in an agreement specified in subdivision (b) with the local  
23 agency.

24 (2) A city or county that the board selected pursuant to this section, as it read on  
25 January 1, 2012, which entered into an agreement with the board before July 1,  
26 2013, may apply to the board for certification pursuant to Section 25297.01. The  
27 city or county may continue to implement the oversight program until July 1, 2013,  
28 and after that date the city or county shall either be certified or be subject to  
29 subdivision (e) of Section 25297.01.

30 (3) On and after June 30, 2013, the board may enter into an agreement pursuant  
31 to this section only with a city or county certified pursuant to Section 25297.01.

32 (b) In implementing the local oversight program for the abatement of, and  
33 oversight of the abatement of, unauthorized releases of hazardous substances from  
34 underground storage tanks, the board may select a local agency to enter into an  
35 agreement with the board. When selecting a local agency, the board shall, from  
36 among those local agencies that apply to the board, give first priority to those local  
37 agencies that have demonstrated prior experience in cleanup, abatement, or other  
38 actions necessary to remedy the effects of unauthorized releases of hazardous  
39 substances from underground storage tanks. The board shall enter into an agreement  
40 with only those local agencies that have implemented this chapter and that, except  
41 as provided in Section 25404.5, have begun to collect and transmit to the board the  
42 surcharge or fees pursuant to subdivision (b) of Section 25287. The agreement shall

1 provide for the local agency to perform, or cause to be performed, any cleanup,  
2 abatement, or other action necessary to remedy the effects of a release of hazardous  
3 substances from an underground storage tank with respect to which the local agency  
4 has enforcement authority pursuant to this section. The board may not enter into an  
5 agreement with a local agency for soil contamination cleanup or for groundwater  
6 contamination cleanup unless the board determines that the local agency has a  
7 demonstrated capability to oversee or perform the cleanup. The implementation of  
8 the cleanup, abatement, or other action shall be consistent with procedures adopted  
9 by the board pursuant to subdivision (d) and shall be based upon cleanup standards  
10 specified by the board or regional board.

11 (c) The board shall provide funding to a local agency that enters into an agreement  
12 pursuant to subdivision (b) for the reasonable costs incurred by the local agency in  
13 overseeing any cleanup, abatement, or other action taken by a responsible party to  
14 remedy the effects of unauthorized releases from underground storage tanks.

15 (d) The board shall adopt administrative and technical procedures, as part of the  
16 state policy for water quality control adopted pursuant to Section 13140 of the Water  
17 Code, for cleanup and abatement actions taken by a local agency with which the  
18 board has entered into an agreement pursuant to this section. The procedures shall  
19 include, but not be limited to, all of the following:

20 (1) Guidelines as to which sites may be assigned to the local agency.

21 (2) The content of the agreements.

22 (3) Procedures by which a responsible party may petition the board or a regional  
23 board for review, pursuant to Article 2 (commencing with Section 13320) of  
24 Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing  
25 with Section 2250) of Division 3 of Title 23 of the California Code of Regulations,  
26 or any successor regulation, as applicable, of actions or decisions of the local agency  
27 in implementing the cleanup, abatement, or other action.

28 (4) Protocols for assessing and recovering money from responsible parties for any  
29 reasonable and necessary costs incurred by the local agency in implementing this  
30 section, as specified in subdivision (i), unless the cleanup or abatement action is  
31 subject to subdivision (d) of Section 25296.10.

32 (5) Quantifiable measures to evaluate the outcome of a pilot program established  
33 pursuant to this section.

34 (e) Any agreement between the regional board and a local agency to carry out a  
35 local oversight program pursuant to this section shall require both of the following:

36 (1) The local agency shall establish and maintain accurate accounting records of  
37 all costs it incurs pursuant to this section and shall periodically make these records  
38 available to the board. The Controller may annually audit these records to verify the  
39 hourly oversight costs charged by a local agency. The board shall reimburse the  
40 Controller for the cost of the audits of a local agency's records conducted pursuant  
41 to this section.

1 (2) The board and the department shall make reasonable efforts to recover costs  
2 incurred pursuant to this section from responsible parties, and may pursue any  
3 available legal remedy for this purpose.

4 (f) The board shall develop a system for maintaining a database for tracking  
5 expenditures of funds pursuant to this section, and shall make this data available to  
6 the Legislature upon request.

7 (g)(1) ~~Sections 25355.5 and 25356~~ Sections 68780 and 69055 do not apply to  
8 expenditures from the Toxic Substances Control Account for oversight of abatement  
9 of releases from underground storage tanks as part of the local oversight program  
10 conducted pursuant to an agreement entered into pursuant to this section.

11 (2) A local agency that enters into an agreement pursuant to subdivision (b) shall  
12 notify the responsible party, for any site subject to a cleanup, abatement, or other  
13 action taken pursuant to the local oversight program established pursuant to this  
14 section, that the responsible party is liable for not more than 150 percent of the total  
15 amount of site-specific oversight costs actually incurred by the local agency.

16 (h) Any aggrieved person may petition the board or regional board for review of  
17 the action or failure to act of a local agency that enters into an agreement pursuant  
18 to subdivision (b), at a site subject to cleanup, abatement, or other action conducted  
19 as part of the local oversight program established pursuant to this section, in  
20 accordance with the procedures adopted by the board or regional board pursuant to  
21 subdivision (d).

22 (i)(1) For purposes of this section, site-specific oversight costs include only the  
23 costs of the following activities, when carried out by the staff of a local agency or  
24 the local agency's authorized representative, that are either technical program staff  
25 or their immediate supervisors:

26 (A) Responsible party identification and notification.

27 (B) Site visits.

28 (C) Sampling activities.

29 (D) Meetings with responsible parties or responsible party consultants.

30 (E) Meetings with the regional board or with other affected agencies regarding a  
31 specific site.

32 (F) Review of reports, workplans, preliminary assessments, remedial action plans,  
33 or postremedial monitoring.

34 (G) Development of enforcement actions against a responsible party.

35 (H) Issuance of a closure document.

36 (2) The responsible party is liable for the site-specific oversight costs, calculated  
37 pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any  
38 cleanup, abatement, or other action taken pursuant to an agreement entered into  
39 pursuant to this section to remedy an unauthorized release from an underground  
40 storage tank.

41 (3) Notwithstanding the requirements of any other law, the amount of liability of  
42 a responsible party for the oversight costs incurred by the local agency and by the  
43 board and regional boards in overseeing any action pursuant to an agreement entered

1 into pursuant to this section shall be calculated as an amount not more than 150  
2 percent of the total amount of the site-specific oversight costs actually incurred by  
3 the local agency and shall not include the direct or indirect costs incurred by the  
4 board or regional boards.

5 (4)(A) The total amount of oversight costs for which a local agency may be  
6 reimbursed shall not exceed one hundred fifteen dollars (\$115) per hour, multiplied  
7 by the total number of site-specific hours performed by the local agency.

8 (B) The total amount of the costs per site for administration and technical  
9 assistance to local agencies by the board and the regional board entering into  
10 agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-  
11 five dollars (\$35) for each hour of site-specific oversight. The board shall base its  
12 costs on the total hours of site-specific oversight work performed by all participating  
13 local agencies. The regional board shall base its costs on the total number of hours  
14 of site-specific oversight costs attributable to the local agency that received regional  
15 board assistance.

16 (C) The amounts specified in subparagraphs (A) and (B) are base rates for the  
17 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter,  
18 the board shall adjust the base rates annually to reflect increases or decreases in the  
19 cost of living during the prior fiscal year, as measured by the implicit price deflator  
20 for state and local government purchases of goods and services, as published by the  
21 United States Department of Commerce or by a successor agency of the federal  
22 government.

23 (5) In recovering costs from responsible parties for costs incurred under this  
24 section, the local agency shall prorate any costs identifiable as startup costs over the  
25 expected number of cases that the local agency will oversee during a 10-year period.  
26 A responsible party who has been assessed startup costs for the cleanup of any  
27 unauthorized release that, as of January 1, 1991, is the subject of oversight by a local  
28 agency, shall receive an adjustment by the local agency in the form of a credit, for  
29 the purposes of cost recovery. Startup costs include all of the following expenses:

30 (A) Small tools, safety clothing, cameras, sampling equipment, and other similar  
31 articles necessary to investigate or document pollution.

32 (B) Office furniture.

33 (C) Staff assistance needed to develop computer tracking of financial and site-  
34 specific records.

35 (D) Training and setup costs for the first six months of the local agency program.

36 (6) This subdivision does not apply to costs that are required to be recovered  
37 pursuant to ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8. Article 5~~  
38 (commencing with Section 68280) of Chapter 2 of Part 2 of Division 45.

39 (j) The inoperation of former paragraph (1) of this subdivision does not affect the  
40 validity of any action taken by the Santa Clara Valley Water District before June  
41 30, 2005, and does not provide a defense for an owner, operator, or other responsible  
42 party who fails to comply with that action.

1 (k) Notwithstanding subdivisions (a) and (b), any agreement entered into before  
2 January 1, 2013, between a regional board and a water district to oversee,  
3 coordinate, or implement a cooperative oversight program will remain in effect in  
4 accordance with the terms of that agreement or the terms of that agreement as may  
5 be amended from time to time.

6 **Comment.** Section 25297.1(g)(1) and (i)(6) are amended to update cross-references in  
7 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
8 25300) of Division 20 of the Health and Safety Code.

9 **Note.** Section 25297.1(g)(1) cross-refers to Sections 25355.5 and 25356, limiting the application  
10 of those sections to certain, specified expenditures. Each of these sections was proposed for  
11 recodification as multiple provisions. The cross-references were updated to refer only to the  
12 provisions that restrict expenditures, as described for each section below.

13 Section 25355.5 requires the department to take certain actions before expending funds at a site.  
14 Section 25355.5 also allows the department to expend funds, notwithstanding those requirements,  
15 in certain situations and deems a failure of a responsible party to comply with an order as a failure  
16 to take timely action. Only the provision of Section 25355.5 requiring certain department actions  
17 prior to expending funds appears to be relevant to this purpose of this cross-reference. For this  
18 reason, the proposed cross-reference update would refer only to proposed Section 69055, which  
19 continues the portion of 25355.5 that specifies the department actions required before expenditures  
20 are authorized.

21 Section 25356 requires the department to list and prioritize hazardous substance release sites  
22 selected for a response action. Section 25356(f) requires all expenditures for response action to be  
23 in conformance with the priority listing of the sites. Only Section 25356(f) appears to be relevant  
24 to the purpose of this cross-reference. For this reason, the proposed cross-reference update would  
25 refer only to proposed Section 68780, which would continue Section 25356(f).

26 **Absent comment, these proposed cross-reference updates will be presumed correct.**

27 **§ 25299.5 (amended). Construction of chapter**

28 SEC. \_\_. Section 25299.5 of the Health and Safety Code is amended to read:

29 25299.5. (a) This chapter shall be construed to assure consistency with the  
30 requirements for state programs implementing the federal act.

31 (b) This chapter shall not be construed to limit or abridge the powers and duties  
32 granted to the department by Chapter 6.5 (commencing with Section 25100) and  
33 ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section  
34 68000) of Division 45 or to the board and each regional board by Division 7  
35 (commencing with Section 13000) of the Water Code.

36 **Comment.** Section 25299.5 is amended to update cross-references in accordance with the  
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
38 the Health and Safety Code.

39 **§ 25299.50.6 (amended). Site Cleanup Subaccount**

40 SEC. \_\_. Section 25299.50.6 of the Health and Safety Code is amended to read:

41 25299.50.6. (a) The Site Cleanup Subaccount is hereby established in the State  
42 Treasury. Moneys shall be deposited in the subaccount pursuant to subdivision (m)  
43 of Section 25299.51.

44 (b) The board may expend the funds in the Site Cleanup Subaccount, upon  
45 appropriation by the Legislature, for the following purposes:

1 (1) To pay for reasonable and necessary expenditures that the board, the  
2 department, a regional board, a local agency, or a water replenishment district incurs  
3 to identify the source of surface or groundwater contamination.

4 (2)(A) To pay for reasonable and necessary expenditures to remediate the harm  
5 or threat of harm to human health, safety, and the environment caused by existing  
6 or threatened surface or groundwater contamination incurred by any of the  
7 following:

8 (i) The board.

9 (ii) The department.

10 (iii) A regional board.

11 (iv) A local agency.

12 (v) A water replenishment district, under the direction of the board, a regional  
13 board, a local agency, or another appropriate regulatory agency with authority over  
14 surface or groundwater cleanup oversight.

15 (B) The board shall consider the following factors when approving expenditures  
16 for specific locations:

17 (i) The degree to which human health, safety, and the environment are threatened  
18 by contamination at the location.

19 (ii) Whether the location is located in a small or financially disadvantaged  
20 community.

21 (iii) The cost and potential environmental benefit of the investigation or cleanup.

22 (iv) Whether there are other potential sources of funding for the investigation or  
23 cleanup.

24 (v) Any other information the board identifies as necessary for consideration.

25 (3) To issue grants pursuant to this section for the reasonable and necessary costs  
26 of actions to remediate the harm or threat of harm to human health, safety, and the  
27 environment caused by existing or threatened surface or groundwater contamination  
28 at a location that meets both of the following conditions:

29 (A) The board, the department, a regional board, or a local agency requires the  
30 responsible parties to undertake or contract for investigation or cleanup, pursuant to  
31 an oral or written order, directive, notification, or approval issued pursuant to  
32 Section 25187, 25296.10, ~~25355.5, or 25358.3~~, 68870 or 69055, or pursuant to a  
33 cleanup and abatement order issued under Section 13304 of the Water Code. The  
34 board may waive this requirement if the board finds that it is infeasible for an order  
35 to be issued before initiation of remediation.

36 (B) The responsible parties lack sufficient financial resources to pay for the  
37 required response actions.

38 (4) For payments to the Attorney General by the board pursuant to subdivision  
39 (g).

40 (c) At least annually, the board shall review grant applications and adopt a list of  
41 applicants to be awarded grants pursuant to paragraph (3) of subdivision (b). In  
42 addition to the conditions specified in paragraph (3) of subdivision (b), the board  
43 shall consider all of the following factors when awarding grants:

1 (1) The degree to which human health, safety, and the environment are threatened  
2 by surface water or groundwater contamination at the location.

3 (2) Whether the location is located in a small or financially disadvantaged  
4 community.

5 (3) The cost and potential environmental benefit of the investigation or cleanup.

6 (4) Whether there are other potential sources of funding for the investigation or  
7 cleanup.

8 (5) Any other information the board identifies as necessary for consideration.

9 (d)(1) The board shall specify the information that shall be included in a grant  
10 application, consistent with this section, including, but not limited to, a provision  
11 requiring the applicant to make a sworn verification of the information in the  
12 application to the best of the applicant's knowledge.

13 (2) The board may adopt procedures to implement this section.

14 (3) The board shall post any procedures or information requirements adopted  
15 pursuant to this section on its internet website.

16 (e)(1) The recipient of grant moneys shall expend those funds only for the  
17 reasonable costs necessary to protect human health, safety, and the environment,  
18 incurred on or after September 25, 2014.

19 (2) The board shall not issue a grant for any costs for which the applicant has  
20 been, or will be, paid by another source.

21 (3) The board may terminate a grant and may bar the applicant from receiving any  
22 future grants from the Site Cleanup Subaccount if the board finds that the applicant  
23 has made a misrepresentation or false claim.

24 (f)(1) Any funds in the Site Cleanup Subaccount that are not expended in a fiscal  
25 year shall remain in the subaccount until they are encumbered.

26 (2) Notwithstanding Section 16304.1 of the Government Code, the board shall  
27 encumber the funds appropriated pursuant to this section within three years of the  
28 appropriation and the board may make a disbursement in liquidation of an  
29 encumbrance before or during the three years following the last day the  
30 appropriation is available for encumbrance.

31 (3) Notwithstanding Section 16475 of the Government Code, any interest earned  
32 upon the money in the Site Cleanup Subaccount shall be deposited in the Site  
33 Cleanup Subaccount.

34 (g) The Attorney General may recover the actual, reasonable costs of investigation  
35 or cleanup undertaken pursuant to this section in a civil action, upon request from  
36 the board, from any responsible party. All money recovered by the Attorney General  
37 pursuant to this section shall be deposited in the Site Cleanup Subaccount.

38 (h) For purposes of this section, "water replenishment district" has the meaning  
39 provided for in Division 18 (commencing with Section 60000) of the Water Code.

40 **Comment.** Section 25299.50.6(b)(3)(A) is amended to update cross-references in accordance  
41 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
42 Division 20 of the Health and Safety Code.

1 **Note.** Section 25299.50.6(b)(3)(A) cross-refers to an order, directive, notification, or approval  
2 issued pursuant to Section 25355.5 or 25358.3. Each of those cross-referenced sections has been  
3 proposed for recodification as multiple provisions. The updating of the respective cross-references  
4 is discussed below.

5 (1) Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections  
6 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section  
7 25355.5(a)) is the only one of those provisions that addresses the issuance of orders and, thus,  
8 appears to be the only provision relevant to this cross-reference. For this reason, the cross-reference  
9 to Section 25355.5 has been updated to refer only to Section 69055. **Absent comment, this  
10 proposed cross-reference update will be presumed correct.**

11 (2) Section 25358.3 has been proposed for recodification as several sections (proposed Sections  
12 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section 25358.3(a))  
13 is the only provision that addresses the department’s issuance of orders to parties and, thus, appears  
14 to be the only provision that is relevant to this cross-reference. Proposed Section 68660 relates to  
15 relief sought in court, in which case the court would be the one to issue orders. However, it does  
16 not appear that court orders are relevant for this provision. For this reason, the cross-reference to  
17 Section 25358.3 has been updated to refer only to Section 68870. **Absent comment, this proposed  
18 cross-reference update will be presumed correct.**

19 **§ 25395.63 (amended). Application of definitions**

20 SEC. \_\_. Section 25395.63 of the Health and Safety Code is amended to read:

21 25395.63. The definitions set forth in this article and in Article 6 (commencing  
22 with Section 25395.90) shall govern the interpretation of this chapter. If a term is  
23 not otherwise defined in this chapter, the definition contained in ~~Chapter 6.8~~  
24 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 68000) of  
25 Division 45 shall apply to that term.

26 **Comment.** Section 25395.63 is amended to update cross-references in accordance with the  
27 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
28 the Health and Safety Code.

29 **§ 25395.66 (amended). “Applicable law”**

30 SEC. \_\_. Section 25395.66 of the Health and Safety Code is amended to read:

31 25395.66. “Applicable law” means all of the provisions of the following state  
32 statutory and common laws that impose liability on an owner or occupant of  
33 property for pollution conditions caused by a release or threatened release of  
34 hazardous material on, under, or adjacent to the property:

35 (a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section  
36 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of  
37 the Civil Code.

38 (b) Chapter 2 (commencing with Section 731) of Title 10 of Part 2 of the Code of  
39 Civil Procedure, but not including Section 736 of the Code of Civil Procedure.

40 (c) Section 5650 of the Fish and Game Code.

41 (d) Chapter 6.7 (commencing with Section 25280); and Chapter 6.75  
42 (commencing with Section 25299.10); ~~and Chapter 6.8 (commencing with Section~~  
43 ~~25300), of this division.~~ of this division, and Part 2 (commencing with Section  
44 68000) of Division 45.

1 (e) Chapter 1 (commencing with Section 13000) to Chapter 5 (commencing with  
2 Section 13300), inclusive, of Division 7 of the Water Code.

3 (f) State common law regarding contribution, nuisance, trespass, and equitable  
4 indemnity.

5 **Comment.** Section 25395.66 is amended to update cross-references in accordance with the  
6 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
7 the Health and Safety Code.

8 **§ 25395.79 (amended). “Release”**

9 SEC. \_\_\_. Section 25395.79 of the Health and Safety Code is amended to read:

10 25395.79. “Release” has the same meaning as defined in Section ~~25320.~~  
11 subdivision (a) of Section 68105.

12 **Comment.** Section 25395.79 is amended to update cross-references in accordance with the  
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
14 the Health and Safety Code.

15 **§ 25395.79.2 (amended). “Site”**

16 SEC. \_\_\_. Section 25395.79.2 of the Health and Safety Code is amended to read:

17 25395.79.2. (a) “Site” means real property located in an urban infill area for which  
18 the expansion, redevelopment, or reuse may be complicated by the presence or  
19 perceived presence of hazardous materials.

20 (b) “Site” does not include any of the following:

21 (1) A facility that is listed or proposed for listing on the National Priorities List  
22 established under Section 105 of the Comprehensive Environmental Response,  
23 Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

24 (2) A site on the list maintained by the department pursuant to ~~Section 25356.~~  
25 Article 5 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45.

26 (3) A site that is solely impacted by a petroleum release from an underground  
27 storage tank eligible for reimbursement from the California Underground Storage  
28 Tank Cleanup Fund.

29 (c) For purposes of this section, the following definitions shall apply:

30 (1) “Infill area” means a vacant or underutilized lot of land within an urban area  
31 that has been previously developed or that is surrounded by parcels that are or have  
32 been previously developed.

33 (2) “Urban area” means either of the following:

34 (A) An incorporated city.

35 (B) An unincorporated area that is completely surrounded by one or more  
36 incorporated cities that meets both of the following criteria:

37 (i) The population of the unincorporated area and the population of the  
38 surrounding incorporated cities is equal to a population of 100,000 or more.

39 (ii) The population density of the unincorporated area is equal to, or greater than,  
40 the population density of the surrounding cities.

1 **Comment.** Section 25395.79.2 is amended to update cross-references in accordance with the  
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
3 the Health and Safety Code.

4 **§ 25395.90 (amended). Definitions**

5 SEC. \_\_. Section 25395.90 of the Health and Safety Code is amended to read:

6 25395.90. (a) Except as otherwise expressly provided in this article, the  
7 definitions in Article 2 (commencing with Section 25395.63) apply to the terms used  
8 in this article.

9 (b) “Action level” has the same meaning as defined in paragraph (1) of  
10 subdivision (c) of Section 116455.

11 (c) “Host jurisdiction” means the city or county in which the site is located and  
12 which has the authority to take action regarding the site pursuant to Title 7  
13 (commencing with Section 65000) of the Government Code.

14 (d) “Unreasonable risk” at a site means that a condition at a site requires a  
15 response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2  
16 (commencing with Section 68000) of Division 45 of this code or Division 7  
17 (commencing with Section 13000) of the Water Code.

18 **Comment.** Section 25395.90 is amended to update cross-references in accordance with the  
19 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
20 the Health and Safety Code.

21 **§ 25395.92 (amended). Agreement for immunity**

22 SEC. \_\_. Section 25395.92 of the Health and Safety Code is amended to read:

23 25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property  
24 owner who seeks to qualify for the immunity provided by this chapter shall enter  
25 into an agreement with an agency pursuant to this article that includes the  
26 performance of a site assessment, and, if the agency determines that a response plan  
27 is necessary pursuant to Section 25395.96, the preparation and implementation of a  
28 response plan.

29 (b) Before finalizing the agreement, the requested agency shall notify other  
30 appropriate agencies, including the host jurisdiction.

31 (c) A person who enters into an agreement with an agency pursuant to this section  
32 shall submit sufficient information to the agency for the agency to determine  
33 whether the site is an eligible site, whether the person meets the conditions to qualify  
34 as a bona fide purchaser, innocent landowner, or contiguous property owner  
35 pursuant to this chapter, and to prepare an agreement pursuant to this section.

36 (d)(1) A person who enters into an agreement pursuant to this section shall agree  
37 to take all actions required for a response action pursuant to ~~Chapter 6.8~~  
38 ~~(commencing with Section 25300)~~ Part 2 (commencing with Section 68000) of  
39 Division 45 and Division 7 (commencing with Section 13000) of the Water Code.  
40 These actions may include actions necessary to prevent an unreasonable risk before  
41 the approval of a response plan.

1 (2) In determining whether there is unreasonable risk at a site for purposes of this  
2 subdivision, the agency shall take into account the intended use of the property, in  
3 accordance with any changed use of the property, as specified in subdivision (d) of  
4 Section 25395.96.

5 **Comment.** Section 25395.92 is amended to update cross-references in accordance with the  
6 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
7 the Health and Safety Code.

8 **§ 25395.93 (amended). Withdrawal from agreement**

9 SEC. \_\_. Section 25395.93 of the Health and Safety Code is amended to read:

10 25395.93. (a) A person may withdraw from an agreement entered into pursuant  
11 to this article by providing a 30-day written notice to the agency and doing both of  
12 the following:

13 (1) Reimbursing the agency for all costs incurred by the agency pursuant to the  
14 agreement.

15 (2) Demonstrating to the satisfaction of the agency that conditions at the site to  
16 which the agreement applies do not pose an endangerment to public health and  
17 safety or the environment. If the agency determines that conditions at the site pose  
18 an endangerment to public health, safety, or the environment, this article does not  
19 prevent the agency from exercising its authority to take appropriate response actions  
20 or to cause the person or persons responsible for the endangerment to take  
21 appropriate response actions.

22 (b) A person who enters into an agreement with an agency pursuant to this article  
23 shall reimburse the agency for all agency costs, including, but not limited to, costs  
24 incurred while reviewing a site assessment plan or a response plan or overseeing the  
25 implementation of a site assessment or response plan by the person pursuant to this  
26 article, except that the department's costs shall be reimbursed pursuant to Chapter  
27 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section  
28 ~~25360. 69650.~~

29 (c) The entry into an agreement pursuant to this article shall not constitute an  
30 admission of fact or liability or conclusion of law for any purpose or proceeding and  
31 a person who enters into an agreement under this article shall not be deemed liable  
32 under any other provision of law solely by reason of entering into that agreement.

33 (d) If the conditions described in paragraph (1) of subdivision (c) of Section  
34 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw  
35 from an agreement entered into pursuant to this chapter by providing a 30-day  
36 written notice to the other party.

37 **Comment.** Section 25395.93 is amended to update cross-references in accordance with the  
38 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
39 the Health and Safety Code.

40 **§ 25395.94 (amended). Site assessment plan**

41 SEC. \_\_. Section 25395.94 of the Health and Safety Code is amended to read:

1 25395.94. (a)(1) A person who enters into an agreement pursuant to this article  
2 with an agency for the oversight of a site assessment shall submit a site assessment  
3 plan to the agency to conduct a site assessment of the site in accordance with the  
4 requirements of this section.

5 (2) If the agency requires a health risk assessment as part of that agreement, the  
6 health assessment shall be prepared in accordance with ~~subdivisions (b), (c), and (d)~~  
7 ~~of Section 25356.1.5. Sections 69265, 69270, and subdivision (a) of Section 69275.~~

8 (b) The site assessment plan shall provide for the evaluation of all of the  
9 following:

10 (1) Whether a release of hazardous materials has occurred at the site, a threat of a  
11 release of hazardous materials exists at the site, or there is a threat of a release of  
12 hazardous materials from the site.

13 (2) If a release or threatened release of hazardous materials exists at the site or  
14 there is a release or a threatened release from the site, whether the release or  
15 threatened release poses an unreasonable risk to public health and safety or the  
16 environment.

17 (c) The site assessment plan shall also include all of the following:

18 (1) Adequate characterization of the hazardous materials released or threatened to  
19 be released at, or from, the site and documentation of the findings.

20 (2) Reasonably available information about the site, including, where appropriate,  
21 a risk assessment that evaluates the risk posed by any hazardous materials released  
22 or threatened to be released at, or from, the site, and information regarding  
23 reasonably anticipated foreseeable uses of the site based on current and projected  
24 land use and zoning designations.

25 (3) If the release has impacted groundwater, reasonable characterization of  
26 underlying groundwater, including present and anticipated beneficial uses of that  
27 water.

28 (d) A person shall submit the site assessment plan to the agency for review and  
29 approval.

30 (e) The agency shall evaluate the adequacy of the site assessment plan to ensure  
31 that it contains all necessary information.

32 (f) After evaluating the site assessment plan, if the agency finds that the site  
33 assessment plan is adequate, the agency shall approve the site assessment plan and  
34 provide notification to appropriate persons, including notification of any public  
35 water system that relies on impacted groundwater for public drinking water  
36 purposes.

37 **Comment.** Section 25395.94(a)(2) is amended to update cross-references in accordance with the  
38 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
39 the Health and Safety Code.

40 **Note.** Section 25395.94(a)(2) cross-refers to subdivisions (b), (c), and (d) of Section 25356.1.5 as  
41 providing standards for health assessments. Section 25395.24 was enacted in 2004. See 2004 Cal.  
42 Stat. ch. 705, § 1. In 2007, Section 25356.1.5 was amended to add a subdivision (e), which also  
43 contains standards for risk assessments. See 2007 Cal. Stat. ch. 597, § 1. Subdivision (e), which is  
44 proposed for recodification as Section 69275(b), also appears to be relevant to the purpose of this

1 cross-reference. It is unclear whether the cross-reference should be expanded to include Section  
2 25356.1.5(e). **The Commission welcomes comment on this issue.**

3 **§ 25395.101 (amended). Effect of article**

4 SEC. \_\_. Section 25395.101 of the Health and Safety Code is amended to read:

5 25395.101. (a) Except as expressly provided in this article, this article does not  
6 affect the authority of an agency to issue an order or take any other action under any  
7 provision of law to protect public health and safety or the environment.

8 (b) Except as otherwise expressly provided in this article, this article does not  
9 affect the authority of the agency or any other public agency to pursue any existing  
10 legal, equitable, or administrative remedies pursuant to state or federal law.

11 (c) Except as otherwise expressly provided in this article, ~~Chapter 6.8~~  
12 ~~(commencing with Section 25300) Part 2 (commencing with Section 68000) of~~  
13 Division 45 does not apply to this article.

14 (d) If a local agency determines that, due to an emergency, it is necessary to gain  
15 access to a site that is the subject of a finding of no further action or a certificate of  
16 completion, the person who has obtained immunity pursuant to this chapter with  
17 regard to that site shall allow the local agency access to the site to take any action  
18 necessary to mitigate that emergency, or take any other necessary response action.  
19 However, that person shall not be required to pay for, or undertake, any of those  
20 actions taken by or required by the local agency, unless the person caused or  
21 contributed to the release at the site that constituted the emergency.

22 **Comment.** Section 25395.101 is amended to update cross-references in accordance with the  
23 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
24 the Health and Safety Code.

25 **§ 25395.104 (amended). Immunities for bona fide ground tenant**

26 SEC. \_\_. Section 25395.104 of the Health and Safety Code is amended to read:

27 25395.104. (a) Except as otherwise provided in this section, a bona fide ground  
28 tenant shall qualify for the following immunities:

29 (1) The bona fide ground tenant shall not be liable under any applicable statute  
30 for a claim made by a person, other than an agency, for response costs or other relief  
31 associated with a release or threatened release of a hazardous material at the site  
32 once the bona fide ground tenant obtains a certification pursuant to subdivision (b)  
33 or (c) that the immunity provided by this section has attached.

34 (2)(A) Except as provided in subparagraph (B), an agency shall not, subsequent  
35 to the date of the agreement, take any action under any applicable statute to require  
36 a bona fide ground tenant to take a response action on account of a release or  
37 threatened release of a hazardous material at a site.

38 (B) The agency that entered into the agreement pursuant to this article may take  
39 action under any applicable statute to enforce the conditions imposed on the bona  
40 fide ground tenant pursuant to the agreement.

1 (b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a),  
2 the immunity provided in this section shall attach to a bona fide ground tenant once  
3 the agency certifies in writing that all of the following have occurred:

4 (1) A site assessment has been completed sufficient for the agency to determine  
5 the remedial measures necessary to allow the site to be used for its intended purposes  
6 without unreasonable risk to the human health and safety of the intended site  
7 occupants.

8 (2) Except for site monitoring, reporting, institutional controls, operation and  
9 maintenance activities, and other ongoing obligations of the bona fide ground  
10 tenant, if any, the portion of the site investigation and the response plan necessary  
11 to allow the site to be used for its intended purposes without unreasonable risk to  
12 the human health and safety of the intended site occupants, including any  
13 confirmation sampling required by the agency to confirm that this standard has been  
14 met, has been implemented to the agency's satisfaction.

15 (3) To the extent required in the agreement entered into pursuant to this article,  
16 all wells, piping, extraction systems, or similar materials or equipment required for  
17 the conduct of remediation efforts to be performed by a person other than the bona  
18 fide ground tenant have either been installed to the agency's satisfaction or have  
19 been accounted for to the agency's satisfaction in site development plans and  
20 specifications.

21 (4) If applicable, an instrument that restricts or imposes obligations on the present  
22 of future uses or activities on the site has been executed and recorded pursuant to  
23 Section 1471 of the Civil Code.

24 (c) A party to an agreement pursuant to this article may request the agency to issue  
25 a written certification confirming that the conditions stated in subdivision (b) have  
26 been met and that the immunity provided for in this section is in effect. The agency  
27 shall provide this certification within 60 days of the date it finds that the conditions  
28 stated in subdivision (b) have been met.

29 (d) The agency that issued a certification pursuant to subdivision (c) may  
30 withdraw that certification if it first provides reasonable notice and opportunity for  
31 the bona fide ground tenant to take action to prevent the withdrawal, and subsequent  
32 to the notice and cure opportunity makes any of the following findings:

33 (1) A material deviation from those requirements applicable to the bona fide  
34 ground tenant under the agreement entered into pursuant to this article that has not  
35 been approved by the agency exists and continues to exist subsequent to the notice  
36 and cure period.

37 (2) The bona fide ground tenant induced the agency to issue the certification by  
38 fraud, or intentional nondisclosure or misrepresentation.

39 (e) Upon the agency's certification pursuant to subdivision (c), the immunity  
40 provided in this section extends to all of the following:

41 (1) The bona fide ground tenant and any successor who demonstrates to the  
42 agency that the person meets the qualifying conditions of subdivision (b) of Section  
43 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who

1 assumes the bona fide ground tenant's obligations of any agreement entered into  
2 pursuant to this article.

3 (2) A person who provides financing to a person specified in paragraph (1).

4 (f) The immunity provided in this section does not extend to, and may not be  
5 transferred to, a person who was a responsible party, as that term is defined in  
6 Section ~~25323.5~~ 68145 for the release at the site prior to acquiring an interest in the  
7 site from the bona fide ground tenant or providing financing as specified in  
8 paragraph (3) of subdivision (e).

9 (g) The immunity provided in this section shall be in addition to any other  
10 immunity provided by law.

11 (h) This section shall not modify or limit the existing authority of a state or local  
12 agency to impose a condition on the issuance of a discretionary permit relating to  
13 the development, use, or occupancy of a site.

14 (i) This section shall not relieve a bona fide ground tenant from reporting,  
15 disclosure, and notification requirements under any applicable statute.

16 (j) The entry into an agreement pursuant to this article shall not constitute an  
17 admission of any fact or liability or conclusion of law for any purpose or proceeding  
18 and a person who enters into an agreement under this article shall not be deemed  
19 liable under any other provision of law solely by reason of entering into the  
20 agreement.

21 (k) If the use of the property changes, after a response plan is approved, to a use  
22 that requires a higher level of protection, the agency may require the preparation  
23 and implementation of a new response plan pursuant to this article.

24 (l) A bona fide ground tenant that purchases a site subsequent to leasing, or taking  
25 an easement in the site, may convert its status to that of a bona fide purchaser  
26 pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground  
27 tenant otherwise meets the requirements of Section 25395.69 and Article 6  
28 (commencing with Section 25395.90). Upon the conversion, the bona fide ground  
29 tenant shall qualify for any and all immunities available to a bona fide purchaser  
30 under this chapter.

31 (m) If the response plan relies on the use of institutional or engineering controls  
32 to make the site suitable for its intended purposes without unreasonable risk to the  
33 human health and safety of the intended occupants of the site, the bona fide ground  
34 tenant seeking immunity shall provide any applicable financial assurances, using  
35 financial assurance guidelines and mechanisms approved by a board, department,  
36 or organization of the California Environmental Protection Agency; periodic reports  
37 as required by the agency to demonstrate that there remains no unreasonable risk to  
38 the human health and safety of the intended occupants. The bona fide ground tenant  
39 shall not make any change in use of the site that is inconsistent with any land use  
40 control recorded for the site unless the change is approved by the agency pursuant  
41 to Sections 25233 and 25234 or, in the case of the board or a regional board,  
42 substantially similar procedures.

1       **Comment.** Section 25395.104(f) is amended to update cross-references in accordance with the  
2 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
3 the Health and Safety Code.

4       **§ 25395.117 (amended). Database and website requirements**

5       SEC. \_\_. Section 25395.117 of the Health and Safety Code is amended to read:  
6       25395.117. (a) On or before January 1, 2006, the agency and the California  
7 Environmental Protection Agency shall implement the requirements imposed by  
8 this section.

9       (b) The department shall revise and upgrade the department’s database systems,  
10 including the list of hazardous substances release sites adopted pursuant to ~~Section~~  
11 ~~25356~~ Article 5 (commencing with Section 68000) of Chapter 4 of Part 2 of Division  
12 45 and the information sent to the agency pursuant to Section 65962.5 of the  
13 Government Code, to enable compatibility with existing databases of the board,  
14 including the GIS mapping system established pursuant to Section 25299.97. The  
15 department shall also install improvements to the database systems to maintain and  
16 display information that includes the number of brownfield sites, each brownfield  
17 site’s location, acreage, response action, site assessments, and the number of orphan  
18 sites where the department is overseeing the response action.

19       (c) The California Environmental Protection Agency, the department, the regional  
20 boards, and the board shall expand their respective Web sites to allow access to  
21 information about brownfield sites and other response action sites through a single  
22 Web site portal.

23       **Comment.** Section 25395.117 is amended to update cross-references in accordance with the  
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
25 the Health and Safety Code.

26       **§ 25400.12 (amended). Definitions for terms not defined by this article**

27       SEC. \_\_. Section 25400.12 of the Health and Safety Code is amended to read:  
28       25400.12. Any term not defined expressly by this article shall have the same  
29 meaning as defined in ~~Chapter 6.8 (commencing with Section 25300)~~. Part 2  
30 (commencing with Section 68000) of Division 45.

31       **Comment.** Section 25400.12 is amended to update cross-references in accordance with the  
32 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
33 the Health and Safety Code.

34       **§ 25403 (amended). Definitions**

35       SEC. \_\_. Section 25403 of the Health and Safety Code is amended to read:  
36       25403. For purposes of this chapter, the following terms shall have the following  
37 meanings:

38       (a) “Blighted area” means an area in which the local agency determines there are  
39 vacancies, abandonment of property, or a reduction or lack of proper utilization of  
40 property, and the presence or perceived presence of a release or releases of

1 hazardous material contributes to the vacancies, abandonment of property, or  
2 reduction or lack of proper utilization of property.

3 (b) “Blighted property” means property with the presence or perceived presence  
4 of a release or releases of hazardous material that contributes to the vacancies,  
5 abandonment of property, or reduction or lack of proper utilization of property.

6 (c) “Clean up” or “cleanup” means an action taken to remove, as defined in  
7 Section ~~25323~~, 68135, remediate, as described in subdivision (a) or (b) of Section  
8 ~~25322~~, 68125, or otherwise abate the effects of a release of hazardous material.

9 (d) “Cleanup plan” means a document that details the actions to be taken to clean  
10 up a release of a hazardous material.

11 (e) “CUPA” means the Certified Unified Program Agency certified to implement  
12 the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

13 (f) “Department” means the Department of Toxic Substances Control.

14 (g) “Designated agency” means an agency designated by the local agency  
15 pursuant to paragraph (1) or (2) of subdivision (e) of Section 25403.1.

16 (h) “Director” means the Director of Toxic Substances Control.

17 (i) “Hazardous material” has the same meaning as defined in subdivision (d) of  
18 Section 25260.

19 (j) “Investigation” means an action taken to determine the source, nature, and  
20 extent of a release of hazardous material with sufficient detail to provide a  
21 reasonable basis for decisions regarding the cleanup of the hazardous material. An  
22 investigation does not include a Phase I or Phase II environmental site assessment.

23 (k) “Investigation plan” means a document that specifies actions to be taken to  
24 investigate a suspected release of hazardous material. An investigation plan does  
25 not include a Phase I or Phase II environmental site assessment.

26 (l) “Local agency” means both of the following:

27 (1) A county, a city, or a city and county.

28 (2) A “housing authority,” as provided in Section 34240, if the housing authority  
29 is an entity assuming the housing functions of a former redevelopment agency  
30 pursuant to paragraph (2) of subdivision (a) of Section 34176 and the property  
31 subject to this chapter was transferred from that successor agency to the housing  
32 authority.

33 (m) “Person” means an individual, trust, firm, joint stock company, business  
34 concern, partnership, limited liability company, association, and corporation,  
35 including, but not limited to, a government corporation. “Person” also includes any  
36 local agency, county, district, commission, the state or any department, agency, or  
37 political subdivision thereof, any interstate body, and the federal government or any  
38 department or agency thereof to the extent permitted by law.

39 (n) “Phase I environmental assessment” means a preliminary assessment of a  
40 property to determine whether there has been, or may have been, a release of  
41 hazardous material based on reasonable available information about the property  
42 and general vicinity. A Phase I environmental assessment shall meet the most  
43 current requirements adopted by the American Society for Testing and Materials

1 (ASTM) for Standard Practice for Environmental Site Assessment: Phase I  
2 Environmental Site Assessment Process or meet the requirements of Part 312  
3 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations.

4 (o) “Phase II environmental assessment” means an intrusive study where actual  
5 physical environmental samples are collected and analyzed to characterize the type  
6 and distribution of hazardous material in the environment. A phase II environmental  
7 assessment shall meet the most current requirements adopted by the American  
8 Society for Testing and Materials (ASTM) for Standard Practice for Environmental  
9 Site Assessments: Phase II Environmental Site Assessment Process.

10 (p) “Qualified independent contractor” means an independent contractor who is  
11 any of the following:

12 (1) An engineering geologist who is certified pursuant to Section 7842 of the  
13 Business and Professions Code.

14 (2) A geologist who is registered pursuant to Section 7850 of the Business and  
15 Professions Code.

16 (3) A civil engineer who is registered pursuant to Section 6762 of the Business  
17 and Professions Code.

18 (q) “Regional board” means a California regional water quality control board.

19 (r) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,  
20 discharging, injecting, escaping, leaching, dumping, or disposing into the  
21 environment on blighted property.

22 (s) “Responsible party” means a person described in subdivision (a) of Section  
23 ~~25323.5~~ 68145 of this code or subdivision (a) of Section 13304 of the Water Code.

24 (t) “Site designation committee” means the committee established pursuant to  
25 Section 25261.

26 (u) “State board” means the State Water Resources Control Board.

27 **Comment.** Subdivisions (c) and (s) of Section 25403 are amended to update cross-references in  
28 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
29 25300) of Division 20 of the Health and Safety Code.

30 **§ 25403.1 (amended). Local agency action to address release affecting blighted property**

31 SEC. \_\_. Section 25403.1 of the Health and Safety Code is amended to read:

32 25403.1. (a)(1)(A) A local agency may, in accordance with this chapter, take any  
33 action that the local agency determines is necessary and that is consistent with other  
34 state and federal laws to investigate or clean up a release on, under, or from blighted  
35 property that the local agency has found to be within a blighted area within the local  
36 agency’s boundaries due to the presence of hazardous materials following a Phase I  
37 or Phase II environmental assessment pursuant to subdivision (f), whether the local  
38 agency owns that property or not. When taking action pursuant to this chapter, if the  
39 local agency does not own property that is the subject of the investigation and  
40 cleanup activities, the local agency has the right to enter that property, if, upon  
41 providing notice to the owner of that property in accordance with subparagraph (A)

1 of paragraph (2) of subdivision (b), the owner of the property does not respond to  
2 the notice or the local agency reasonably deems the response inadequate.

3 (B) The local agency shall contact the department or the appropriate regional  
4 board prior to issuing a notice pursuant to paragraph (2) of subdivision (b) in  
5 connection with a property on the National Priority List or a property or release  
6 subject to any of the following:

7 (i) Chapter 6.5 (commencing with Section 25100).

8 (ii) A Cease and Desist Order issued under Section 13301 of the Water Code.

9 (iii) A Cleanup and Abatement Order issued under Section 13304 of the Water  
10 Code.

11 (iv) An existing voluntary cleanup agreement between the regional board or the  
12 department and a responsible party that requires a cleanup by a specified date.

13 (v) An order issued by a regional board pursuant to Section 13267 of the Water  
14 Code, or an agreement entered into by the department pursuant to Section 25187-  
15 ~~25355.5, or 25358.3, or 69055~~, for the investigation or cleanup at a site.

16 (vi) A remedial action order, an imminent or substantial endangerment order or  
17 agreement, a prospective purchase agreement, or an order on consent issued  
18 pursuant to Section ~~25355.5, 25356.1.3, or 25358.3~~, 68870, 69020, or 69055, as  
19 applicable.

20 (vii) An expedited remediation order issued pursuant to the former Chapter 6.86  
21 (commencing with Section 25396), as that chapter read on January 1, 2012.

22 (viii) An agreement entered into pursuant to the California Land Reuse and  
23 Revitalization Act (Chapter 6.82 (commencing with Section 25395.60)), as  
24 specified in Section 25395.92.

25 (ix) An agreement for the environmental oversight of schools entered into  
26 pursuant to Section 17213.1 of the Education Code and in accordance with Sections  
27 17201 and 17210.1 of the Education Code.

28 (C)(i) If the department or the regional board objects within 30 days to the local  
29 agency issuing the notice, the local agency and the department or regional board  
30 shall promptly meet and confer to resolve the department's or regional board's  
31 concerns. If the local agency and the department or the regional board cannot reach  
32 a mutually acceptable resolution on sites identified in clause (iv) of subparagraph  
33 (B) of paragraph (1), the matter shall be submitted to the site designation committee  
34 created pursuant to Section 25261.

35 (ii) Notwithstanding subdivision (a) of Section 25261, the designee of the  
36 department or the regional board on the site designation committee shall not  
37 participate in the review of a dispute involving the department or a regional board,  
38 respectively. The decision of the site designation committee shall resolve the matter  
39 impartially, by majority vote, and within 45 days of the date on which the matter is  
40 presented. Either party to the dispute may present the matter to the site designation  
41 committee, and each party shall be given a reasonable opportunity to be heard.

42 (2) A local agency shall, before taking action to clean up the release, do all of the  
43 following:

1 (A) If the investigation has not been completed or additional investigation is  
2 necessary, have an investigation plan prepared by an independent qualified  
3 contractor.

4 (B) Submit an investigation plan and cost recovery agreement to the regional  
5 board or the department for review and approval.

6 (C) After completion of the investigation plan, have a cleanup plan prepared by  
7 an independent qualified contractor.

8 (D) Submit a cleanup plan and existing applicable documents required pursuant  
9 to the California Environmental Quality Act (Division 13 (commencing with  
10 Section 21000) of the Public Resources Code) to the regional board or to the  
11 department for approval.

12 (E) Comply with the public participation requirements specified in Section  
13 25403.7.

14 (3) The regional board or the department shall act on the investigation plan within  
15 30 days of receipt of the investigation plan.

16 (4) The regional board or the department shall respond to the local agency's  
17 request for approval of a cleanup plan within 60 days of the receipt of the plan.

18 (5) Within 60 days after approval of the cleanup plan, pursuant to applicable  
19 statutes and regulations, the director or the regional board, as appropriate, shall  
20 acknowledge, in writing, that upon proper completion of the cleanup in accordance  
21 with the cleanup plan, the immunity provided by Section 25403.2 shall apply.

22 (6) The local agency shall notify the department and local health and building  
23 departments and the regional board of any cleanup activity pursuant to this section  
24 at least 30 days before the commencement of the activity.

25 (7) If an action taken by a local agency or a responsible party to clean up a release  
26 of a hazardous material does not meet, or is not consistent with, a cleanup plan  
27 approved by the regional board or the department, the department or the regional  
28 board that approved the cleanup plan may require the responsible party or local  
29 agency to take, or cause the taking of, additional action to clean up the release, as  
30 provided by applicable law.

31 (8) If an administering agency for the site has been designated pursuant to Section  
32 25262, the department or the regional board may impose any requirements for  
33 additional action pursuant to paragraph (7) only as provided in Sections 26263 and  
34 25265.

35 (9) If methane or landfill gas is present, the local agency shall obtain written  
36 approval from the Department of Resources Recycling and Recovery prior to taking  
37 action authorized under this subdivision.

38 (b) Except as provided in subdivision (c), a local agency may take the actions  
39 specified in subdivision (a) only under one of the following conditions:

40 (1) There is no responsible party for the release identified by the local agency.

41 (2) Both of the following apply:

42 (A) A party determined by the local agency to be a responsible party for the  
43 release has been notified by the local agency, or has received adequate notice from

1 the department, a regional board, the California Environmental Protection Agency,  
2 or other governmental agency with relevant authority, and has been given 60 days  
3 to respond and to propose an investigation plan and schedule if in the opinion of the  
4 responsible party's qualified independent contractor there is not enough site-  
5 specific data to prepare a cleanup plan, and 60 days to propose a cleanup plan and  
6 schedule following completion of the investigation plan in accordance with the  
7 investigation plan schedule approved by the local agency.

8 (B) The responsible party specified in subparagraph (A) has not agreed within an  
9 additional 60 days to implement an investigation plan and schedule to investigate or  
10 clean up the release that meets both of the following requirements:

11 (i) The investigation plan and schedule and the cleanup plan and schedule are  
12 acceptable to the local agency.

13 (ii) The local agency makes a finding that the investigation plan and schedule and  
14 the cleanup plan and schedule are consistent with the intended development  
15 schedule and use of the property.

16 (3)(A) The party determined by the local agency to be the responsible party for  
17 the hazardous material release entered into an agreement with the local agency to  
18 prepare an investigation plan or cleanup plan for approval by the department, the  
19 regional board, or the appropriate local agency, and to implement the investigation  
20 plan or cleanup plan in accordance with an agreed schedule, but failed to do any of  
21 the following:

22 (i) Prepare the investigation plan or cleanup plan.

23 (ii) Implement the investigation plan or cleanup plan in accordance with the  
24 agreed schedule.

25 (iii) Otherwise failed to carry out the investigation in an appropriate and timely  
26 manner.

27 (B) An action taken by the local agency pursuant to this paragraph shall be  
28 consistent with any agreement between the local agency and the responsible party  
29 and with the requirements of the state agency or the designated agency that approved  
30 or will approve the cleanup plan and is overseeing or will oversee the preparation  
31 and implementation of the cleanup plan.

32 (c) The responsible party specified in subparagraph (A) of paragraph (2) of  
33 subdivision (b) may appeal a 60-day notice issued pursuant to this section to the  
34 local agency's governing body by filing a written request to appeal the notice with  
35 the clerk of the local agency within 30 days of receipt of the notice. Filing an appeal  
36 to the local agency's governing body tolls the 60-day notice period until the appeal  
37 is heard and decided by the local agency's governing body. Any challenge to the  
38 decision reached by the local agency's governing body shall be presented only as  
39 part of a cost recovery or injunctive proceeding initiated by the local agency under  
40 Section 25403.5. The local agency's decision shall be upheld if supported by  
41 substantial evidence presented in the action commenced under Section 25403.5, and  
42 shall not be invalidated on the grounds that the local agency failed to include all  
43 responsible parties in a 60-day notice issued pursuant to this section. A claim of

1 failure to include all responsible parties in a 60-day notice issued pursuant to this  
2 section shall not be a defense to the liability provided for in Section 25403.5.

3 (d) Subdivision (b) does not apply to either of the following:

4 (1) A local agency taking actions to conduct a Phase I or Phase II environmental  
5 assessment in accordance with standard real estate practices.

6 (2) A local agency taking the actions specified in subdivision (a) if the local  
7 agency determines that conditions require immediate action due to an imminent  
8 threat to human health or the environment.

9 (e)(1) A local agency may designate another agency, in lieu of the department or  
10 the regional board, to review and approve a cleanup plan and to oversee the cleanup  
11 of hazardous materials from a specific hazardous material release site if the agency  
12 is designated as the administering agency under Section 25262. In that event, the  
13 designated agency shall conduct the oversight of the cleanup in accordance with  
14 Chapter 6.65 (commencing with Section 25260), and all provisions of that chapter  
15 shall apply to the cleanup.

16 (2) A local agency may designate another agency to review and approve a cleanup  
17 plan for a site and oversee the cleanup at the site if all of the following conditions  
18 exist:

19 (A) The designated agency is certified as a CUPA.

20 (B) The site is an underground storage tank site subject to Chapter 6.7  
21 (commencing with Section 25280).

22 (C) The designated agency is certified pursuant to Section 25297.01 and the state  
23 board has entered into an agreement with the designated agency pursuant to Section  
24 25297.1.

25 (D) The designated agency determines that the site is within the guidelines and  
26 protocols established in, and pursuant to, the agreement specified in subparagraph  
27 (C).

28 (E) The designated agency consents to the designation.

29 (3) Within 60 days after approving a cleanup plan pursuant to paragraph (1) or  
30 (2), the designated agency shall issue a notice that, upon proper completion of the  
31 cleanup plan, the immunity specified in Section 25403.2 shall apply. If the  
32 designated agency was formed by the local agency, the cleanup plan shall also be  
33 subject to the approval of the department or regional board.

34 (4)(A) An agency may not consent to the designation pursuant to paragraph (1) or  
35 (2) unless the designated agency determines that it has adequate staff resources and  
36 the requisite technical expertise and capabilities available to adequately supervise  
37 the cleanup.

38 (B) If an agency has been designated pursuant to paragraph (2), the department or  
39 a regional board may require the designated agency to withdraw from the  
40 designation or stop taking action pursuant to that designation, after providing the  
41 designated agency with adequate notice, if both of the following conditions are met:

1 (i) The department or a regional board determines that the agency’s designation  
2 was not consistent with paragraph (2), or makes one of the findings specified in  
3 subdivision (d) of Section 101480.

4 (ii) The department or a regional board determines that it has adequate staff  
5 resources and capabilities available to adequately supervise the cleanup, and  
6 assumes that responsibility.

7 (C) This paragraph does not prevent a regional board from taking an action  
8 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

9 (5) If an agency has been designated pursuant to paragraph (1) or (2), the  
10 designated agency may, after providing the local agency with adequate notice,  
11 withdraw from its designation or stop taking action pursuant to that designation after  
12 making one of the findings specified in subdivision (d) of Section 101480.

13 (f)(1) To facilitate remedial planning, the local agency may require the owner or  
14 operator of a site within the local agency’s jurisdictional boundaries to provide the  
15 local agency with all existing environmental information pertaining to the site,  
16 including the results of any phase I or subsequent environmental assessment, any  
17 assessment conducted pursuant to an order from, or agreement with, any federal,  
18 state, or local agency, and any other environmental assessment information, except  
19 that which is determined to be privileged.

20 (2) A person requested to furnish the information pursuant to paragraph (1) shall  
21 be required only to furnish that information that may be within that person’s  
22 possession or control, including actual knowledge of information within the  
23 possession or control of any other party. If environmental assessment information  
24 is not available, the local agency may require the owner of the property to conduct,  
25 and to pay the expenses of conducting, an assessment in accordance with standard  
26 real estate practices for conducting phase I or phase II environmental assessments.  
27 If the local agency conducts the phase I or phase II environmental assessment  
28 because the owner or operator failed to provide this information, the local agency  
29 shall have a right of entry, upon reasonable notice, to enter the property and conduct  
30 the phase I or phase II environmental assessment. The local agency may recover the  
31 costs of the phase I or phase II environmental assessment in accordance with Section  
32 25403.5.

33 **Comment.** Section 25403.1(a)(1)(B)(v) and (vi) are amended to update cross-references in  
34 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
35 25300) of Division 20 of the Health and Safety Code.

36 **Notes. (1)** Section 25403.1(a)(1)(B)(v) cross-refers to an agreement pursuant to Section 25355.5  
37 or 25358.3. Each of the cross-references is discussed in turn below.

38 Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections  
39 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section  
40 25355.5(a)) is the only one of those provisions that addresses entering agreements and, thus,  
41 appears to be the only provision relevant to this cross-reference. For this reason, the cross-reference  
42 to Section 25355.5 has been updated to refer only to Section 69055. **Absent comment, this**  
43 **proposed cross-reference update will be presumed correct.**

1 Section 25358.3 does not expressly authorize agreements. It is unclear what portions of Section  
2 25358.3 (proposed for recodification as Sections 68650, 68655, 68660, and 68870) might be  
3 relevant to this cross-reference. **The Commission welcomes comment on this issue.**

4 (2) Section 25403.1(a)(1)(B)(vi) cross-refers to a “remedial action order, an imminent or  
5 substantial endangerment order or agreement, a prospective purchase agreement, or an order on  
6 consent” pursuant to Section 25355.5, 25356.1.3, or 25358.3. The cross-reference for each of these  
7 sections has been updated as described in turn below. **Absent comment, these proposed cross-  
8 reference updates will be presumed correct.**

9 Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections  
10 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section  
11 25355.5(a)) is the only one of those provisions that addresses the department’s authority to issue  
12 orders and, thus, appears to be the only provision relevant to this cross-reference. For this reason,  
13 the cross-reference to Section 25355.5 has been updated to refer only to Section 69055.

14 Section 25356.1.3 has been proposed for recodification as multiple sections (proposed Sections  
15 69020, 69025, 69030, and 69035). Proposed Section 69020, which recodifies Section 25356.1.3(a),  
16 is the only provision that addresses the department’s authority to issue orders. For this reason, the  
17 cross-reference to Section 25356.1.3 has been updated to refer only to proposed Section 69020.

18 Section 25358.3 has been proposed for recodification as several sections (proposed Sections  
19 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section 25358.3(a))  
20 is the only provision that addresses the department’s issuance of orders to parties and, thus, appears  
21 to be the only provision that is relevant to this cross-reference. Proposed Section 68660 relates to  
22 relief sought in court, in which case the court would be the one to issue orders. However, it does  
23 not appear that court orders are relevant for this provision. For this reason, the cross-reference to  
24 Section 25358.3 has been updated to refer only to Section 68870.

25 **§ 25403.2 (amended). Liability of local agency for release addressed by completed action**

26 SEC. \_\_. Section 25403.2 of the Health and Safety Code is amended to read:

27 25403.2. (a)(1) Notwithstanding any other law, except as otherwise provided in  
28 this chapter, a local agency that undertakes and completes an action, or causes  
29 another person to undertake and complete an action pursuant to Section 25403.1 for  
30 which a finding of completion is made pursuant to subdivision (b), to clean up a  
31 hazardous material release on, under, or from property within the local agency’s  
32 boundaries, in accordance with a cleanup plan prepared by a qualified independent  
33 contractor and approved by the department, a regional board, or the designated  
34 agency, in accordance with Section 25403.1, is not liable, with respect to that release  
35 only, pursuant to any of the following:

36 (A) Division 7 (commencing with Section 13000) of the Water Code.

37 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing  
38 with Section 25280), or Chapter 6.75 (commencing with Section 25299.10), ~~or~~  
39 ~~Chapter 6.8 (commencing with Section 25300)~~, of Division 20: or Part 2  
40 (commencing with Section 68000) of Division 45.

41 (C) Any other state or local law imposing liability for cleanup of releases of  
42 hazardous materials.

43 (2) If the cleanup was also performed pursuant to Chapter 6.65 (commencing with  
44 Section 25260) of Division 20, and a certificate of completion is issued pursuant to  
45 subdivision (b) of Section 25264, the immunity from local agency action provided

1 by the certificate of completion, as specified in subdivision (c) of Section 25264,  
2 shall apply to the local agency, in addition to the immunity conferred by this section.

3 (3) In the case of a cleanup performed pursuant to Chapter 6.65 (commencing  
4 with Section 25260) of Division 20, and for which the administering agency is a  
5 local agency, the limitations on the certificate of completion set forth in paragraphs  
6 (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity  
7 provided for by this section and subdivision (c) of Section 25264.

8 (b) Notwithstanding any provision of law or policy providing for certification by  
9 a person conducting a cleanup that the action has been properly completed, a  
10 determination that a cleanup has been properly completed pursuant to this section  
11 shall be made only upon the affirmative approval of the director, the regional board,  
12 or the designated agency, as appropriate. The department or regional board, as  
13 appropriate, shall, within 60 days of the date it finds that a cleanup has been  
14 completed, notify the local agency in writing that the immunity provided by this  
15 section is in effect. If another agency is designated to oversee the cleanup pursuant  
16 to paragraph (1) or (2) of subdivision (d) of Section 25403.1, the designated agency  
17 shall issue a notice within 60 days of the date it finds that a cleanup has been  
18 completed.

19 (c) Upon proper completion of a cleanup, as specified in subdivision (b), the  
20 immunity from action provided by the certificate of completion provided pursuant  
21 to subdivision (c) of Section 25264 and the immunity provided by this section  
22 extends to all of the following, but only for the release or releases specifically  
23 identified in the approved cleanup plan and not for any subsequent release or any  
24 release not specifically identified in the approved cleanup plan:

25 (1) An employee or agent of the local agency, including an instrumentality of the  
26 local agency authorized to exercise some, or all, of the powers of a local agency  
27 within, or for the benefit of, a local agency and an employee or agent of the  
28 instrumentality.

29 (2) A person that enters into an agreement with a local agency for the development  
30 of property, if the agreement requires the person to acquire property affected by a  
31 hazardous material release or to clean up a hazardous material release with respect  
32 to that property.

33 (3) A person that acquires the property after a person has entered into an  
34 agreement with a local agency for development of the property, as described in  
35 paragraph (2).

36 (4) A person that provides financing to a person specified in paragraph (2) or (3).

37 (d) Notwithstanding any other law, the immunity provided by this section does  
38 not extend to any of the following:

39 (1) A person that was a responsible party for the release before entering into an  
40 agreement, acquiring property, or providing financing, as specified in subdivision  
41 (c).

1 (2) A person specified in subdivision (a) or (c) for any subsequent release of a  
2 hazardous material or any release of a hazardous material not specifically identified  
3 in the approved cleanup plan.

4 (3) A contractor who prepares the cleanup plan or conducts the cleanup.

5 (4) A person that obtains an approval of a cleanup plan pursuant to Section  
6 25403.1, or pursuant to a finding, as specified in subdivision (b), by fraud, negligent  
7 or intentional nondisclosure, or misrepresentation, and a person that knows before  
8 the approval or determination is obtained or before the person enters into an  
9 agreement, acquires the property, or provides financing, as specified in subdivision  
10 (c), that the approval or determination was obtained by these means.

11 (e) The immunity provided by this section is in addition to any other immunity  
12 provided by law to a local agency.

13 (f) This section does not impair any cause of action by a local agency or any other  
14 party against the person responsible for the hazardous material release that is the  
15 subject of the cleanup taken by the local agency or other person immune from  
16 liability pursuant to this section.

17 (g) This section does not apply to, or limit, alter, or restrict, an action for personal  
18 injury or wrongful death.

19 (h) This section does not limit liability of a person described in paragraph (3) or  
20 (4) of subdivision (d) for damages under the federal Comprehensive Environmental  
21 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
22 9601 et seq.).

23 (i) This section does not establish, limit, or affect the liability of a local agency  
24 for a release of a hazardous material that is not investigated or cleaned up pursuant  
25 to this section or Chapter 6.65 (commencing with Section 25260).

26 **Comment.** Section 25403.2(a)(1)(B) is amended to update cross-references in accordance with  
27 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
28 of the Health and Safety Code.

29 **§ 25403.5 (amended). Local agency cost recovery**

30 SEC. \_\_. Section 25403.5 of the Health and Safety Code is amended to read:

31 25403.5. (a) Except as otherwise provided in this chapter, if a local agency  
32 undertakes action to investigate property or clean up, or to require others to  
33 investigate or clean up, including compelling a responsible party through a civil  
34 injunctive action, a release of hazardous material, the responsible party shall be  
35 liable to the local agency for the costs incurred in the action. A local agency may  
36 not recover the costs of goods and services that were not procured in accordance  
37 with procurement procedures, where applicable. The amount of the costs shall  
38 include the interest on the costs accrued from the date of expenditure and reasonable  
39 attorney's fees and shall be recoverable in a civil action. Interest shall be calculated  
40 based on the average annual rate of return on a local agency's investment of surplus  
41 funds for the fiscal year in which costs were incurred.

1 (b) The only defenses available to a responsible party shall be the defenses  
2 specified in subdivision (b) of Section ~~25323.5~~ 68145.

3 (c) A local agency may recover any costs incurred to develop and to implement a  
4 cleanup plan approved pursuant to this chapter, to the same extent the department is  
5 authorized to recover those costs. The scope and standard of liability for cost  
6 recovery pursuant to this section shall be the scope and standard of liability under  
7 the federal Comprehensive Environmental Response, Compensation, and Liability  
8 Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to  
9 the department. However, any reference to hazardous substance in that act shall be  
10 deemed to refer to hazardous material as defined in Section 25403. It is the intent of  
11 the Legislature that local agencies diligently pursue reimbursement for investigation  
12 and cleanup costs incurred pursuant to this chapter, but each local agency is  
13 authorized to assess whether and to what extent cost recovery is practicable.

14 (d) An action for recovery of the costs of a cleanup undertaken by a local agency  
15 under this section shall be commenced within three years after completion of the  
16 cleanup.

17 (e) The action to recover costs provided by this section is in addition to, and is not  
18 to be construed as restricting, any other cause of action available to a local agency.

19 **Comment.** Section 25403.5(b) is amended to update cross-references in accordance with the  
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
21 the Health and Safety Code.

22 **§ 25404 (amended). Unified program general provisions**

23 SEC. \_\_. Section 25404 of the Health and Safety Code is amended to read:

24 25404. (a) For purposes of this chapter, the following terms shall have the  
25 following meanings:

26 (1)(A) “Certified Unified Program Agency” or “CUPA” means the agency  
27 certified by the secretary to implement the unified program specified in this chapter  
28 within a jurisdiction.

29 (B) “Participating Agency” or “PA” means a state or local agency that has a  
30 written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3,  
31 and is approved by the secretary, to implement or enforce one or more of the unified  
32 program elements specified in subdivision (c), in accordance with Sections 25404.1  
33 and 25404.2.

34 (C) “Unified Program Agency” or “UPA” means the CUPA, or its participating  
35 agencies to the extent each PA has been designated by the CUPA, pursuant to a  
36 written agreement, to implement or enforce a particular unified program element  
37 specified in subdivision (c). The UPAs have the responsibility and authority to  
38 implement and enforce the requirements listed in subdivision (c), and the  
39 regulations adopted to implement the requirements listed in subdivision (c), to the  
40 extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67  
41 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280),  
42 Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 to 25404.2,

1 inclusive. After a CUPA has been certified by the secretary, the unified program  
2 agencies and the state agencies carrying out responsibilities under this chapter shall  
3 be the only agencies authorized to enforce the requirements listed in subdivision (c)  
4 within the jurisdiction of the CUPA.

5 (2) “Department” means the Department of Toxic Substances Control.

6 (3) “Minor violation” means the failure of a person to comply with a requirement  
7 or condition of an applicable law, regulation, permit, information request, order,  
8 variance, or other requirement, whether procedural or substantive, of the unified  
9 program that the UPA is authorized to implement or enforce pursuant to this chapter,  
10 and that does not otherwise include any of the following:

11 (A) A violation that results in injury to persons or property, or that presents a  
12 significant threat to human health or the environment.

13 (B) A knowing, willful, or intentional violation.

14 (C) A violation that is a chronic violation, or that is committed by a recalcitrant  
15 violator. In determining whether a violation is chronic or a violator is recalcitrant,  
16 the UPA shall consider whether there is evidence indicating that the violator has  
17 engaged in a pattern of neglect or disregard with respect to applicable regulatory  
18 requirements.

19 (D) A violation that results in an emergency response from a public safety agency.

20 (E) A violation that enables the violator to benefit economically from the  
21 noncompliance, either by reduced costs or competitive advantage.

22 (F) A class I violation, as provided in Section 25110.8.5.

23 (G) A violation that hinders the ability of the UPA to determine compliance with  
24 any other applicable local, state, or federal rule, regulation, information request,  
25 order, variance, permit, or other requirement.

26 (4) “Secretary” means the Secretary for Environmental Protection.

27 (5) “Unified program facility” means all contiguous land and structures, other  
28 appurtenances, and improvements on the land that are subject to the requirements  
29 listed in subdivision (c).

30 (6) “Unified program facility permit” means a permit issued pursuant to this  
31 chapter. For purposes of this chapter, a unified program facility permit encompasses  
32 the permitting requirements of Section 25284, and permit or authorization  
33 requirements under a local ordinance or regulation relating to the generation or  
34 handling of hazardous waste or hazardous materials, but does not encompass the  
35 permitting requirements of a local ordinance that incorporates provisions of the  
36 California Fire Code or the California Building Code.

37 (b) The secretary shall adopt implementing regulations and implement a unified  
38 hazardous waste and hazardous materials management regulatory program, which  
39 shall be known as the unified program, after holding an appropriate number of  
40 public hearings throughout the state. The unified program shall be developed in  
41 close consultation with the director, the Director of Emergency Services, the State  
42 Fire Marshal, the executive officers and chairpersons of the State Water Resources  
43 Control Board and the California regional water quality control boards, the local

1 health officers, local fire services, and other appropriate officers of interested local  
2 agencies, and affected businesses and interested members of the public, including  
3 environmental organizations.

4 (c) The unified program shall consolidate the administration of the following  
5 requirements and, to the maximum extent feasible within statutory constraints, shall  
6 ensure the coordination and consistency of any regulations adopted pursuant to  
7 those requirements:

8 (1)(A) Except as provided in subparagraphs (B) and (C), the requirements of  
9 Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the  
10 department pursuant to that chapter, that are applicable to all of the following:

11 (i) Hazardous waste generators, persons operating pursuant to a permit-by-rule,  
12 conditional authorization, or conditional exemption, pursuant to Chapter 6.5  
13 (commencing with Section 25100) or the regulations adopted by the department.

14 (ii) Persons managing perchlorate materials.

15 (iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter  
16 6.5.

17 (iv) Persons operating a collection location that has been established under an  
18 architectural paint stewardship plan approved by the Department of Resources  
19 Recycling and Recovery pursuant to the architectural paint recovery program  
20 established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of  
21 Division 30 of the Public Resources Code.

22 (v) A transfer facility, as defined in paragraph (3) of subdivision (a) of Section  
23 25123.3, that is operated by a door-to-door household hazardous waste collection  
24 program or household hazardous waste residential pickup service, as defined in  
25 subdivision (c) of Section 25218.1.

26 (vi) Persons who receive used oil from consumers pursuant to Section 25250.11.

27 (B) The unified program shall not include the requirements of paragraph (3) of  
28 subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and  
29 25200.14, and the authority to issue an order under Sections 25187 and 25187.1,  
30 with regard to those portions of a unified program facility that are subject to one of  
31 the following:

32 (i) A corrective action order issued by the department pursuant to Section 25187.

33 (ii) An order issued by the department pursuant to ~~Chapter 6.8 (commencing with~~  
34 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~  
35 ~~division or Part 2 (commencing with Section 68000) of Division 45.~~

36 (iii) A remedial action plan approved pursuant to ~~Chapter 6.8 (commencing with~~  
37 ~~Section 25300) or former Chapter 6.85 (commencing with Section 25396); of this~~  
38 ~~division or Part 2 (commencing with Section 68000) of Division 45.~~

39 (iv) A cleanup and abatement order issued by a California regional water quality  
40 control board pursuant to Section 13304 of the Water Code, to the extent that the  
41 cleanup and abatement order addresses the requirements of the applicable section  
42 or sections listed in this subparagraph.

1 (v) Corrective action required under subsection (u) of Section 6924 of Title 42 of  
2 the United States Code or subsection (h) of Section 6928 of Title 42 of the United  
3 States Code.

4 (vi) An environmental assessment pursuant to Section 25200.14 or a corrective  
5 action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section  
6 25200.3, that is being overseen by the department.

7 (C) The unified program shall not include the requirements of Chapter 6.5  
8 (commencing with Section 25100), and the regulations adopted by the department  
9 pursuant to that chapter, applicable to persons operating transportable treatment  
10 units, except that any required notice regarding transportable treatment units shall  
11 also be provided to the CUPAs.

12 (2) The requirements of Chapter 6.67 (commencing with Section 25270)  
13 concerning aboveground storage tanks.

14 (3)(A) Except as provided in subparagraphs (B) and (C), the requirements of  
15 Chapter 6.7 (commencing with Section 25280) concerning underground storage  
16 tanks and the requirements of any underground storage tank ordinance adopted by  
17 a city or county.

18 (B) The unified program shall not include the responsibilities assigned to the State  
19 Water Resources Control Board pursuant to Section 25297.1.

20 (C) The unified program shall not include the corrective action requirements of  
21 Sections 25296.10 to 25296.40, inclusive.

22 (4) The requirements of Article 1 (commencing with Section 25500) of Chapter  
23 6.95 concerning hazardous material release response plans and inventories.

24 (5) The requirements of Article 2 (commencing with Section 25531) of Chapter  
25 6.95, concerning the accidental release prevention program.

26 (6) The requirements for the hazardous materials plan and hazardous materials  
27 inventory statement of the California Fire Code, as adopted by the State Fire  
28 Marshal pursuant to Section 13143.9.

29 (d) To the maximum extent feasible within statutory constraints, the secretary  
30 shall consolidate, coordinate, and make consistent these requirements of the unified  
31 program with other requirements imposed by other federal, state, regional, or local  
32 agencies upon facilities regulated by the unified program.

33 (e)(1) The secretary shall establish standards applicable to CUPAs, participating  
34 agencies, state agencies, and businesses specifying the data to be collected and  
35 submitted by unified program agencies in administering the programs listed in  
36 subdivision (c).

37 (2)(A) The secretary shall establish a statewide information management system  
38 capable of receiving all data collected by the unified program agencies and reported  
39 by regulated businesses pursuant to this subdivision, in a manner that is most cost  
40 efficient and effective for both the regulated businesses and state and local agencies.  
41 The secretary shall prescribe an XML or other compatible web-based format for the  
42 transfer of data from CUPAs and regulated businesses and make all nonconfidential  
43 data available on the internet.

1 (B) The secretary shall establish milestones to measure the implementation of the  
2 statewide information management system and shall provide periodic status updates  
3 to interested parties.

4 (3)(A)(i) Except as provided in subparagraph (B), in addition to any other funding  
5 that becomes available, the secretary shall increase the oversight surcharge provided  
6 for in subdivision (b) of Section 25404.5 by an amount necessary to meet the  
7 requirements of this subdivision for a period of three years, to establish the statewide  
8 information management system, consistent with paragraph (2). The increase in the  
9 oversight surcharge shall not exceed twenty-five dollars (\$25) in any one year of the  
10 three-year period. The secretary shall thereafter maintain the statewide information  
11 management system, funded by the assessment the secretary is authorized to impose  
12 pursuant to Section 25404.5.

13 (ii) No less than 75 percent of the additional funding raised pursuant to clause (i)  
14 shall be provided to CUPAs and PAs through grant funds or statewide contract  
15 services, in the amounts determined by the secretary to assist these local agencies  
16 in meeting these information management system requirements.

17 (B) A facility that is owned or operated by the federal government and that is  
18 subject to the unified program shall pay the surcharge required by this paragraph to  
19 the extent authorized by federal law.

20 (C) The secretary, or one or more of the boards, departments, or offices within the  
21 California Environmental Protection Agency, shall seek available federal funding  
22 for purposes of implementing this subdivision.

23 (4) No later than three years after the statewide information management system  
24 is established, each CUPA, PA, and regulated business shall report program data  
25 electronically. The secretary shall work with the CUPAs to develop a phase-in  
26 schedule for the electronic collection and submittal of information to be included in  
27 the statewide information management system, giving first priority to information  
28 relating to those chemicals determined by the secretary to be of greatest concern.  
29 The secretary, in making this determination shall consult with the CUPAs, the  
30 California Emergency Management Agency, the State Fire Marshal, and the boards,  
31 departments, and offices within the California Environmental Protection Agency.

32 (5) The secretary, in collaboration with the CUPAs, shall provide technical  
33 assistance to regulated businesses to comply with the electronic reporting  
34 requirements and may expend funds identified in clause (i) of subparagraph (A) of  
35 paragraph (3) for that purpose.

36 **Comment.** Section 25404(c)(1)(B)(ii) and (iii) are amended to update cross-references in  
37 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
38 25300) of Division 20 of the Health and Safety Code.

39 **§ 25404.1 (amended). Agency responsibilities and certification for unified program**

40 SEC. \_\_. Section 25404.1 of the Health and Safety Code is amended to read:

41 25404.1. (a)(1) All aspects of the unified program related to the adoption and  
42 interpretation of statewide standards and requirements shall be the responsibility of

1 the state agency which is charged with that responsibility under existing law. For  
2 underground storage tanks, that agency shall be the State Water Resources Control  
3 Board. The California regional water quality control boards shall have responsibility  
4 for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The  
5 Department of Toxic Substances Control shall have the sole responsibility for the  
6 issuances of variances from the requirements of Chapter 6.5 (commencing with  
7 Section 25100) and the regulations adopted pursuant thereto, for the determination  
8 of whether or not a waste is hazardous or nonhazardous, for the determination of  
9 whether or not a person is eligible to be deemed to be operating pursuant to a permit-  
10 by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5  
11 (commencing with Section 25100) or the regulations adopted by the department,  
12 and for the suspension and revocation of permits-by-rule, conditional  
13 authorizations, and conditional exemptions.

14 (2) Except as provided in paragraphs (1) and (3), those aspects of the unified  
15 program related to the application of statewide standards to particular facilities,  
16 including the issuance of unified program facility permits, the review of reports and  
17 plans, environmental assessment, compliance and correction, and the enforcement  
18 of those standards and requirements against particular facilities, shall be the  
19 responsibility of the unified program agencies.

20 (3)(A) Except in those jurisdictions for which the UPA has been determined by  
21 the department, in accordance with regulations adopted pursuant to subparagraph  
22 (C), to be qualified to implement the environmental assessment and removal and  
23 remediation corrective action aspects of the unified program, the department shall  
24 have sole responsibility and authority under the unified program for all of the  
25 following:

26 (i) Implementing and enforcing the requirements of paragraph (3) of subdivision  
27 (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations  
28 adopted by the department to implement those sections. As a pilot program in up to  
29 10 counties, pending the adoption and implementation of regulations pursuant to  
30 subparagraph (C), the department may delegate to the CUPA, through a delegation  
31 agreement, responsibility and authority for implementing and enforcing the  
32 requirements of Section 25200.14.

33 (ii) The issuance of orders under Section 25187 requiring removal or remedial  
34 action.

35 (iii) The issuance of orders under Section 25187.1.

36 (B) Notwithstanding subparagraph (A), a UPA may issue an order under Section  
37 25187 specifying a schedule for compliance or correction and imposing an  
38 administrative penalty for any violation of the requirements of Chapter 6.5  
39 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of  
40 Section 25404, or the requirements of any permit, rule, regulation, standard or  
41 requirement issued or adopted pursuant to the requirements of Chapter 6.5  
42 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of  
43 Section 25404, if one of the following applies:

1 (i) The order does not require removal or remedial action.

2 (ii) The only removal or remedial actions required by the order are those actions  
3 determined to be necessary to address an imminent and substantial endangerment  
4 based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

5 (C) The department shall adopt emergency regulations specifying the criteria and  
6 procedures for implementing paragraph (3) of subdivision (c) of Section 25200.3  
7 and Sections 25200.10 and 25200.14, including criteria and procedures for  
8 determining whether or not a unified program agency is qualified to implement the  
9 environmental assessment and removal and remediation corrective action portions  
10 of the unified program under paragraph (3) of subdivision (c) of Section 25200.3  
11 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining  
12 whether a unified program agency is qualified shall, at a minimum, include  
13 consideration of the following factors:

14 (i) Adequacy of the technical expertise possessed by the unified program agency.

15 (ii) Adequacy of staff resources.

16 (iii) Adequacy of budget resources and funding mechanisms.

17 (iv) Training requirements.

18 (v) Past performance in implementing and enforcing requirements related to  
19 environmental assessments, and removal and remediation corrective actions.

20 (vi) Recordkeeping and accounting systems.

21 (D) The regulations adopted by the department pursuant to subparagraph (C) shall  
22 include provisions to ensure coordinated and consistent application of paragraph (3)  
23 of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and  
24 25200.14, when both the department and the unified program agency are, or will be,  
25 implementing and enforcing the requirements of one or more of these sections at the  
26 same facility.

27 (E) For purposes of subparagraph (D), “facility” means the entire site that is under  
28 the control of the owner or operator.

29 (F) If the department is designated as a unified program agency, the department  
30 is deemed qualified to implement all of the following:

31 (i) The environmental assessment, removal and remedial action, and corrective  
32 action aspects of the unified program.

33 (ii) Paragraph (3) of subdivision (c) of Section ~~25300.3~~, 25200.3, Sections  
34 25200.10, 25200.14, 25187, and 25287.1, and the regulations adopted by the  
35 department to implement those provisions.

36 (b)(1) On or before January 1, 1996, each county shall apply to the secretary to be  
37 certified as a unified program agency to implement the unified program within the  
38 unincorporated area of the county and within each city in the county, in which area  
39 or city, as of January 1, 1996, the city or other local agency has not applied to be the  
40 certified unified program agency.

41 (2)(A) Any city or other local agency which, as of December 31, 1995, has been  
42 designated as an administering agency pursuant to Section 25502, or which has  
43 assumed responsibility for the implementation of Chapter 6.7 (commencing with

1 Section 25280) pursuant to Section 25283, may apply to the secretary to become the  
2 certified unified program agency to implement the unified program within the  
3 jurisdictional boundaries of the city or local agency.

4 (B) A city or other local agency which, as of December 31, 1995, has not been  
5 designated as an administering agency pursuant to Section 25502, or which has not  
6 assumed responsibility for the implementation of Chapter 6.7 (commencing with  
7 Section 25280) pursuant to Section 25283, may apply to the secretary to become the  
8 certified unified program agency within the jurisdictional boundaries of the city or  
9 local agency if it enters into an agreement with the county to become the certified  
10 unified program agency within those boundaries. A county shall not refuse to enter  
11 into an agreement unless it specifies in writing its reasons for failing to enter into  
12 the agreement. However, if the city does not enter into the agreement with the  
13 county, within 30 days of receiving a county’s reasons for failing to enter into  
14 agreement, a city may request that the secretary allow it to apply to be a certified  
15 unified program agency and the secretary may, in ~~his or her~~ the secretary’s  
16 discretion, approve the request.

17 (3) A city, county, or other local agency may propose, in its application for  
18 certification to the secretary, to allow other public agencies to implement certain  
19 elements of the unified program, but the secretary shall accept that proposal only if  
20 the secretary makes the findings specified in subdivision (d) of Section 25404.3.

21 (4) If a city or other local agency which, as of December 31, 1995, has been  
22 designated as an administering agency pursuant to Section 25502, or has assumed  
23 responsibility for the implementation of Chapter 6.7 (commencing with Section  
24 25280) pursuant to Section 25283, requests that the county propose in its application  
25 for certification to the secretary that the city or local agency implement, within the  
26 jurisdictional boundaries of the city or local agency, those elements of the unified  
27 program which, as of December 31, 1995, the city or local agency has authority to  
28 administer, the county shall grant that request. If ~~such~~ an agency described in this  
29 paragraph is subsequently removed or withdraws from the unified program, the  
30 agency shall not act as an administering agency under Section 25502 or act as a  
31 local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as  
32 provided in subdivision (c) of Section 25283.

33 **Comment.** Section 25404.1(a)(3)(F)(ii) is amended to correct an erroneous cross-reference to  
34 “Section 25300.3.” This cross-reference was corrected to refer to “Section 25200.3.”

35 This section is also amended to eliminate gendered pronouns and to make technical changes.

36 **Note.** In updating the cross-references to provisions contained in Chapter 6.8 (commencing with  
37 Section 25300), the Commission came across Section 25404.1(a)(3)(F)(ii), which cross-references  
38 Section 25300.3. Section 25300.3 falls within the range of section numbers found in Chapter 6.8,  
39 but there is no Section 25300.3. Section 25404.1 contains multiple cross-references to Section  
40 25200.3, so it appears that the cross-reference should instead refer to this provision. For this reason,  
41 the erroneous cross-reference to Section 25300.3 has been corrected to refer to Section 25200.3.  
42 **Absent comment, this proposed cross-reference correction will be presumed correct.**

1 § 25411 (amended). Definitions

2 SEC. \_\_. Section 25411 of the Health and Safety Code is amended to read:  
3 25411. As used in this chapter:

4 (a) ~~“Agency” means the Environmental Affairs Agency.~~

5 ~~(b)~~ “Handle” means to use, generate, process, produce, package, treat, store, or  
6 dispose of a hazardous material in any fashion.

7 ~~(c)~~ (b) “Hazardous material” means any of the following materials:

8 (1) A material listed in subdivision (b) of Section 6382 of the Labor Code.

9 (2) A material defined in Section 25115, 25117, or ~~25316~~. subdivision (a) of  
10 Section 68075.

11 (3) Any other material which the director determines, because of its quantity,  
12 concentration, or physical or chemical characteristics, poses a significant present or  
13 potential hazard to human health and safety or to the environment if released into  
14 the community.

15 ~~(d)~~ (c) “Release” means any spilling, leaking, pumping, pouring, emitting,  
16 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the  
17 environment.

18 ~~(e) “Secretary” means the Secretary of the Environmental Affairs Agency.~~

19 **Comment.** Section 25411 is amended to update cross-references in accordance with the  
20 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
21 the Health and Safety Code.

22 This section is also amended to delete obsolete definitions for terms that are not used in the  
23 chapter governed by the definitions.

24 **Note.** Section 25411 defines “agency” and “secretary.” However, those terms are not used in the  
25 chapter and the obsolete definitions for those terms are proposed for deletion. However, the chapter  
26 uses similar undefined terms, “department” and “director.” See, e.g., Sections 25411 and 25416.  
27 Given the subject matter of this chapter (hazardous materials information), it seems likely that these  
28 terms are intended to refer to the Department of Toxic Substances Control and the Director of Toxic  
29 Substances Control. **The Commission welcomes comment on the intended meaning of the**  
30 **terms, “department” and “director,” and whether these terms should be defined in Section**  
31 **25411.**

32 § 25416 (amended). Conduct of studies and information programs

33 SEC. \_\_. Section 25416 of the Health and Safety Code is amended to read:

34 25416. (a) All studies and community information programs conducted pursuant  
35 to this section shall be done only if either subdivision (b) applies or if funds are  
36 available without restructuring the department’s funding priorities. The department  
37 shall conduct these studies and information programs in the following manner:

38 (1) The department shall, except as provided in subdivision (b), and in conjunction  
39 with the local health officer, the State Department of Health Services, and the Office  
40 of Environmental Health Hazard Assessment, conduct or contract for  
41 epidemiological studies to identify and monitor health effects related to exposure to  
42 hazardous materials, as defined in Section 66084 of Title 22 of the California Code  
43 of Regulations. A study may be conducted in any area of the state identified by the

1 department or the local health officer as a site of potential exposure to hazardous  
2 materials, including, but not limited to, any of the following areas:

3 (A) All communities located near hazardous waste disposal facilities.

4 (B) In all communities containing hazardous substance release sites listed  
5 pursuant to ~~Section 25356~~ Article 5 (commencing with Section 68760) of Chapter  
6 4 of Part 2 of Division 45 or listed pursuant to the Comprehensive Environmental  
7 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

8 (C) In all areas around the location of major generators of hazardous waste.

9 (D) In all other areas identified by local health officers or the State Department of  
10 Health Services as possible locations of public exposure to hazardous materials.

11 (2) The department, in consultation with the State Department of Health Services  
12 and the Office of Environmental Health Hazard Assessment, shall determine which  
13 epidemiological studies are to be conducted pursuant to this section based on the  
14 potential for public exposure to hazardous materials. Studies in areas near Class I  
15 hazardous waste disposal facilities, as defined in Section 2531 of Title 23 of the  
16 California Code of Regulations, shall be given the highest priority for funding. If a  
17 hearing is conducted pursuant to Section 25149 and the hearing officer determines  
18 that there is a significant potential for endangerment to the public as a result of the  
19 suspected or actual release of a hazardous material, the department shall give  
20 priority to conducting an epidemiological study for that facility.

21 (3) If a local health officer determines that a study should be conducted pursuant  
22 to this section because of a potential public exposure to hazardous materials, the  
23 local health officer may request that the department initiate or contract for a study  
24 pursuant to this section by demonstrating to the department that there is sufficient  
25 evidence that justifies the need for a study. The department shall respond to the local  
26 health officer's request within 90 days.

27 (4) A local health officer may contract with qualified persons or firms to produce  
28 the epidemiological studies specified in paragraph (1).

29 (5) The design and methodology of any study conducted pursuant to this section  
30 shall be reviewed and approved by the department, the State Department of Health  
31 Services, and the Office of Environmental Health Hazard Assessment prior to the  
32 initiation of the study.

33 (6) In any county in which hazardous waste disposal facilities are located and in  
34 all other counties in which the State Department of Health Services identifies  
35 significant actual or potential public exposure to hazardous materials, the  
36 department shall, in conjunction with the local health officer, conduct or contract  
37 for a community information program with respect to sites of potential exposure to  
38 hazardous materials identified under paragraph (1) to do all of the following:

39 (A) Organize and conduct educational programs for local physicians and other  
40 health professionals on the effects of exposure to hazardous materials and reporting  
41 requirements.

42 (B) Disseminate information to high risk populations on the health effects of  
43 exposure to hazardous materials.

1 (C) Conduct public forums on the health effects of exposure to hazardous  
2 substances and methods of limiting exposure.

3 (7) Paragraph (6) does not apply to hazardous substance release sites listed on the  
4 National Priorities List for which the Environmental Protection Agency has  
5 assumed lead responsibility for community relations.

6 (b) If a county is authorized to impose a license tax pursuant to Section 25149.5  
7 for revenue purposes, the department may require the county to provide funding for  
8 carrying out epidemiological studies or the community information program  
9 concerning the hazardous waste facility subject to the license tax. The department  
10 shall provide the county with technical assistance to conduct an epidemiological  
11 study pursuant to this subdivision. The department may exempt a county from the  
12 requirements of this subdivision if the county demonstrates to the department that  
13 the revenue potential from the facility would not be adequate to conduct an  
14 epidemiological study or community information program. When considering a  
15 county request for an exemption, the department shall consider the regulatory costs  
16 and responsibilities of the county related to that facility.

17 (c) The department shall expend funds from the Toxic Substances Control  
18 Account, upon appropriation by the Legislature, to conduct studies and community  
19 information programs in counties containing a hazardous substance release site  
20 listed pursuant to ~~Section 25356. Article 5 (commencing with Section 68760)~~ of  
21 Chapter 4 of Part 2 of Division 45. The department shall expend funds from the  
22 Hazardous Waste Control Account, upon appropriation by the Legislature, to  
23 conduct all other studies and community information programs conducted pursuant  
24 to this section, except as provided in subdivision (b).

25 **Comment.** Section 25416(a)(1)(B) and (c) are amended to update cross-references in accordance  
26 with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of  
27 Division 20 of the Health and Safety Code.

28 **§ 25501 (amended). Definitions**

29 SEC. \_\_. Section 25501 of the Health and Safety Code is amended to read:

30 25501. Unless the context indicates otherwise, the following definitions govern  
31 the construction of this article:

32 (a) “Agricultural handler” means a business operating a farm that is subject to the  
33 exemption specified in Section 25507.1.

34 (b) “Area plan” means a plan established pursuant to Section 25503 by a unified  
35 program agency for emergency response to a release or threatened release of a  
36 hazardous material within a city or county.

37 (c) “Business” means all of the following:

38 (1) An employer, self-employed individual, trust, firm, joint stock company,  
39 corporation, partnership, limited liability partnership or company, or other business  
40 entity.

41 (2) A business organized for profit and a nonprofit business.

42 (3) The federal government, to the extent authorized by law.

1 (4) An agency, department, office, board, commission, or bureau of state  
2 government, including, but not limited to, the campuses of the California  
3 Community Colleges, the California State University, and the University of  
4 California.

5 (5) An agency, department, office, board, commission, or bureau of a city, county,  
6 or district.

7 (6) A handler that operates or owns a unified program facility.

8 (d) “Business plan” means a separate plan for each unified program facility, site,  
9 or branch of a business that meets the requirements of Section 25505.

10 (e)(1) “Certified unified program agency” or “CUPA” means the agency certified  
11 by the secretary to implement the unified program specified in Chapter 6.11  
12 (commencing with Section 25404) within a jurisdiction.

13 (2) “Participating agency” or “PA” means an agency that has a written agreement  
14 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by  
15 the secretary, to implement or enforce one or more of the unified program elements  
16 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in  
17 accordance with Sections 25404.1 and 25404.2.

18 (3) “Unified program agency” or “UPA” means the CUPA, or its participating  
19 agencies to the extent each PA has been designated by the CUPA, pursuant to a  
20 written agreement, to implement or enforce a particular unified program element  
21 specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes  
22 of this article and Article 2 (commencing with Section 25531), the UPAs have the  
23 responsibility and authority, to the extent provided by this article and Article 2  
24 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement  
25 and enforce only those requirements of this article and Article 2 (commencing with  
26 Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.

27 (4) The UPAs also have the responsibility and authority, to the extent provided by  
28 this article and Article 2 (commencing with Section 25531) and Sections 25404.1  
29 and 25404.2, to implement and enforce the regulations adopted to implement the  
30 requirements of this article and Article 2 (commencing with Section 25531) listed  
31 in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has  
32 been certified by the secretary, the unified program agencies shall be the only local  
33 agencies authorized to enforce the requirements of this article and Article 2  
34 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision  
35 (c) of Section 25404 within the jurisdiction of the CUPA.

36 (f) “City” includes any city and county.

37 (g) “Chemical name” means the scientific designation of a substance in  
38 accordance with the nomenclature system developed by the International Union of  
39 Pure and Applied Chemistry or the system developed by the Chemical Abstracts  
40 Service.

41 (h) “Common name” means any designation or identification, such as a code  
42 name, code number, trade name, or brand name, used to identify a substance by  
43 other than its chemical name.

1 (i) “Compressed gas” means a material, or mixture of materials, that meets either  
2 of the following:

3 (1) The definition of compressed gas or cryogenic fluid found in the California  
4 Fire Code.

5 (2) Compressed gas that is regulated pursuant to Part 1 (commencing with Section  
6 6300) of Division 5 of the Labor Code.

7 (j) “Consumer product” means a commodity used for personal, family, or  
8 household purposes, or is present in the same form, concentration, and quantity as  
9 a product prepackaged for distribution to and use by the general public.

10 (k) “Emergency response personnel” means a public employee, including, but not  
11 limited to, a firefighter or emergency rescue personnel, as defined in Section 245.1  
12 of the Penal Code, or personnel of a local emergency medical services (EMS)  
13 agency, as designated pursuant to Section 1797.200, who is responsible for  
14 response, mitigation, or recovery activities in a medical, fire, or hazardous material  
15 incident, or natural disaster where public health, public safety, or the environment  
16 may be impacted.

17 (l) “Handle” means all of the following:

18 (1)(A) To use, generate, process, produce, package, treat, store, emit, discharge,  
19 or dispose of a hazardous material in any fashion.

20 (B) For purposes of subparagraph (A), “store” does not include the storage of  
21 hazardous materials incidental to transportation, as defined in Title 49 of the Code  
22 of Federal Regulations, with regard to the inventory requirements of Section 25506.

23 (2)(A) The use or potential use of a quantity of hazardous material by the  
24 connection of a marine vessel, tank vehicle, tank car, or container to a system or  
25 process for any purpose.

26 (B) For purposes of subparagraph (A), the use or potential use does not include  
27 the immediate transfer to or from an approved atmospheric tank or approved  
28 portable tank that is regulated as loading or unloading incidental to transportation  
29 by Title 49 of the Code of Federal Regulations.

30 (m) “Handler” means a business that handles a hazardous material.

31 (n)(1) “Hazardous material” means a material listed in paragraph (2) that, because  
32 of its quantity, concentration, or physical or chemical characteristics, poses a  
33 significant present or potential hazard to human health and safety or to the  
34 environment if released into the workplace or the environment, or a material  
35 specified in an ordinance adopted pursuant to paragraph (3).

36 (2) Hazardous materials include all of the following:

37 (A) A substance or product for which the manufacturer or producer is required to  
38 prepare a material safety data sheet pursuant to the Hazardous Substances  
39 Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part  
40 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or  
41 regulation.

1 (B) A substance listed as a radioactive material in Appendix B of Part 30  
2 (commencing with Section 30.1) of Title 10 of the Code of Federal Regulations, as  
3 maintained and updated by the Nuclear Regulatory Commission.

4 (C) A substance listed pursuant to Title 49 of the Code of Federal Regulations.

5 (D) A substance listed in Section 339 of Title 8 of the California Code of  
6 Regulations.

7 (E) A material listed as a hazardous waste, as defined by Sections 25115, 25117,  
8 and ~~25316~~. subdivision (a) of Section 68075.

9 (3) The governing body of a unified program agency may adopt an ordinance that  
10 provides that, within the jurisdiction of the unified program agency, a material not  
11 listed in paragraph (2) is a hazardous material for purposes of this article if a handler  
12 has a reasonable basis for believing that the material would be injurious to the health  
13 and safety of persons or harmful to the environment if released into the workplace  
14 or the environment, and requests the governing body of the unified program agency  
15 to adopt that ordinance, or if the governing body of the unified program agency has  
16 a reasonable basis for believing that the material would be injurious to the health  
17 and safety of persons or harmful to the environment if released into the workplace  
18 or the environment. The handler or the unified program agency shall notify the  
19 secretary no later than 30 days after the date an ordinance is adopted pursuant to this  
20 paragraph.

21 (o) “Office” means the Office of Emergency Services.

22 (p) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying,  
23 discharging, injecting, escaping, leaching, dumping, or disposing into the  
24 environment, unless permitted or authorized by a regulatory agency.

25 (q) “Retail establishment” means a business that sells consumer products  
26 prepackaged for distribution to, and intended for use by, the general public. A retail  
27 establishment may include storage areas or storerooms in establishments that are  
28 separated from shelves for display areas but maintained within the physical confines  
29 of the retail establishments. A retail establishment does not include a pest control  
30 dealer, as defined in Section 11407 of the Food and Agricultural Code.

31 (r) “Secretary” means the Secretary for Environmental Protection.

32 (s) “Statewide information management system” means the statewide information  
33 management system established pursuant to subdivision (e) of Section 25404 that  
34 provides for the combination of state and local information management systems  
35 for the purposes of managing unified program data.

36 (t) “Threatened release” means a condition, circumstance, or incident making it  
37 necessary to take immediate action to prevent, reduce, or mitigate a release with the  
38 potential to cause damage or harm to persons, property, or the environment.

39 (u) “Trade secret” means trade secrets as defined in either subdivision (d) of  
40 Section 6254.7 of the Government Code or Section 1061 of the Evidence Code.

41 (v) “Unified program facility” means all contiguous land and structures, other  
42 appurtenances, and improvements on the land that are subject to the requirements

1 of paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this  
2 article, “facility” has the same meaning as unified program facility.

3 **Comment.** Section 25501(n)(2)(E) is amended to update cross-references in accordance with  
4 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
5 of the Health and Safety Code.

6 **§ 25548 (amended). Findings and declarations**

7 SEC. \_\_. Section 25548 of the Health and Safety Code is amended to read:

8 25548. (a) The Legislature hereby finds and declares all of the following:

9 (1) There is uncertainty in the law of this state with regard to the liability of lenders  
10 for hazardous material contamination involving property that is owned or used by  
11 borrowers, whether or not the property is collateral for the loan or obligation.

12 (2) There is also uncertainty in the law of this state with regard to the liability of  
13 trustees, executors, and other fiduciaries for hazardous material contamination  
14 involving property that is part of the fiduciary estate. Fiduciaries understand that the  
15 fiduciary estate may have that liability, but are concerned that a fiduciary may have  
16 independent personal liability, despite the absence of personal culpability for the  
17 contamination.

18 (3) The uncertainty as to liability or potential liability is attributable to the failure  
19 of existing law, except for the security interest exemption incorporated by reference  
20 in Section ~~25323.5~~, 68145, to recognize that usually the credit or fiduciary  
21 relationship is not sufficiently related to the hazardous material contamination to  
22 warrant, as a policy matter, the imposition of liability on lenders and fiduciaries.

23 (b) It is the intent of the Legislature, in enacting this chapter, to specify the type  
24 of lender and fiduciary conduct that will not incur liability for hazardous material  
25 contamination. However, the liability exemption has appropriate boundaries. For  
26 example, the exemption will not protect lenders or fiduciaries in transactions that  
27 are structured for the purpose of evading liability for hazardous material  
28 contamination if the lender or fiduciary is not acting within its respective capacity,  
29 or if the contamination is caused by the lender or fiduciary.

30 (c) This chapter does not apply to judicial actions filed, or administrative orders  
31 issued, before January 1, 1997, or to proceedings to enforce judicial or administrative  
32 orders issued before January 1, 1997.

33 **Comment.** Section 25548 is amended to update cross-references in accordance with the  
34 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
35 the Health and Safety Code.

36 **§ 25548.1 (amended). Definitions**

37 SEC. \_\_. Section 25548.1 of the Health and Safety Code is amended to read:

38 25548.1. As used in this chapter, the following terms have the following meaning:

39 (a) “Actual benefit” means the amount, if any, realized by the lender upon the  
40 disposition of property acquired through foreclosure or its equivalent as a direct  
41 result of a removal or remedial action undertaken by another person, not to exceed

1 the amount, if any, by which the disposition proceeds exceed the sum of the balance  
2 of all of the following:

3 (1) The loan or obligation or the amount of the lien, evidenced by the loan or  
4 obligation outstanding at foreclosure or its equivalent.

5 (2) The costs, including attorneys' fees, incurred by the lender in connection with  
6 the foreclosure or its equivalent, subsequent ownership, any removal or remedial  
7 action, and disposition of the property.

8 (b) "Borrower, debtor or obligor" means a person who is obligated to a lender  
9 under a loan or obligation, whether or not the lender maintains a security interest in  
10 that person's property.

11 (c) "Damages" includes compensatory damages, exemplary damages, punitive  
12 damages, and costs of every kind and nature, including, but not limited to, costs of  
13 a removal or remedial action.

14 (d) "Fiduciary" means a person who is acting in any of the following capacities:

15 (1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of  
16 Section 82 of the Probate Code.

17 (2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive,  
18 or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate  
19 Code.

20 (3) A trustee appointed in proceedings under any state or federal bankruptcy law.

21 (4) An assignee or a trustee acting under an assignment made for the benefit of  
22 creditors.

23 (5) A court-appointed receiver.

24 (e) "Finance lease" means a transaction with respect to which both of the  
25 following apply:

26 (1) The lessor does not select or manufacture the goods or does not supply the  
27 goods, except in the case of a re-lease, whether it is created by a new transaction or  
28 substitution of the lessee.

29 (2) The lessor acquires the goods or right to possession and use of the goods in  
30 connection with the lease or a prior lease transaction.

31 (f) "Foreclosure or its equivalent" means the acquisition of property by a lender  
32 through any of the following:

33 (1) Judicial or nonjudicial foreclosure of the lender's security interest in the  
34 property or acceptance of a deed or other conveyance in satisfaction thereto.

35 (2) Acceptance of a deed in lieu or other conveyance in satisfaction of a loan or  
36 obligation previously contracted.

37 (3) Termination of a finance lease by consent or default.

38 (4) Any other formal or informal manner, whether pursuant to law or under  
39 warranties, covenants, conditions, representations or promises from the borrower,  
40 by which the lender acquires, for subsequent disposition, actual possession of the  
41 property subject to a security interest.

42 (g) "Hazardous material" has the same meaning as defined in subdivision (d) of  
43 Section 25260.

1 (h)(1) “Indicia of ownership” means evidence of a security interest, evidence of  
2 an interest in a security interest, or evidence of an interest in real or personal  
3 property securing a loan or other obligation, including, but not limited to, any legal  
4 or equitable title to real or personal property acquired incident to foreclosure or its  
5 equivalent.

6 (2) “Evidence of an interest” includes, but is not limited to, all of the following:

7 (A) Mortgages.

8 (B) Deeds of trust.

9 (C) Liens.

10 (D) Surety bonds and guarantees of obligations.

11 (E) Title held pursuant to a finance lease in which the lessor does not select  
12 initially the leased property.

13 (F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

14 (G) Assignments, pledges, or other rights to, or other forms of, encumbrance  
15 against property that are held primarily to protect a security interest.

16 (3) A person is not required to hold title or a security interest to maintain indicia  
17 of ownership.

18 (i) “Lender” means a person to the extent of the capacity in which that person  
19 maintains indicia of ownership primarily to protect a security interest or makes,  
20 acquires, renews, modifies, or holds a loan or obligation from a borrower. “Lender”  
21 includes either of the following persons:

22 (1) Any person who acts as, or on behalf of, a lender in connection with any aspect  
23 of the solicitation, negotiation, consummation, disbursement, administration,  
24 servicing, collection, enforcement, or foreclosure or its equivalent of a loan or  
25 obligation or security interest in property such as a surety, escrow, or title company.

26 (2) Any person who makes, secures, acquires, or holds a loan or obligation or  
27 security interest by assignment, sale, pledge, subrogation, succession, or operation  
28 of law, or becomes the receiver for the holder of a loan or obligation or security  
29 interest.

30 (j) “Loan or obligation” means a loan, revolving or nonrevolving line of credit,  
31 finance lease, sale-leaseback that provides for a purchase option in favor of the  
32 lessee, installment sale contract, sale on account, or other credit sale, letter of credit,  
33 forbearance or guaranty, collateral pledge, or other suretyship obligation, and any  
34 extension, renewal, or modification thereof. A loan or obligation may or may not  
35 involve a security interest in property.

36 (k)(1) Except as provided in paragraphs (3) and (4), “participate (or participation)  
37 in the management of the property” means actual participation in the management  
38 or operational affairs of the property by the lender while the borrower, under the  
39 loan or obligation, is in possession of the property, and the lender exercises  
40 decisionmaking control over the environmental compliance by the borrower, so that  
41 the lender assumes responsibility for the hazardous material handling or disposal  
42 practices of the borrower, or exercises control at a level comparable to that of a  
43 manager of the enterprise of the borrower, so that the lender assumes or manifests

1 responsibility for the overall management of the enterprise encompassing the day-  
2 to-day decisionmaking of the enterprise with respect to either of the following:

3 (A) Environmental compliance.

4 (B) All, or substantially all, of the operational, as opposed to financial or  
5 administrative, aspects of the enterprise other than environmental compliance.

6 (2) For purposes of paragraph (1), the following terms have the following  
7 meaning:

8 (A) “Operational aspects of the enterprise” includes, but is not limited to,  
9 functions such as that of facility or plant manager, operations manager, chief  
10 operating officer, or chief executive officer.

11 (B) “Financial or administrative aspects” includes, but is not limited to, functions  
12 such as that of a credit manager, accounts payable/receivable manager, personnel  
13 manager, controller, or chief financial officer.

14 (3) Notwithstanding paragraph (1), “participation in the management of the  
15 property” does not include an act or omission by a prospective lender prior to  
16 making, acquiring, or holding a loan or obligation. “Participation in the management  
17 of the property” also does not include the actions taken by a prospective lender who  
18 undertakes or requires an environmental inspection of property prior to making,  
19 acquiring, or holding a loan or obligation. A lender or prospective lender does not  
20 “participate in the management of the property” if the lender or prospective lender  
21 requires the borrower to clean up the property or requires the borrower to comply  
22 or come into compliance with any applicable law or regulation. This chapter does  
23 not require a lender to conduct or require an inspection prior to foreclosure or its  
24 equivalent to qualify for the exemption provided by this chapter, and the liability of  
25 a lender shall not be based on or affected by whether the lender conducts or requires  
26 an inspection prior to foreclosure or its equivalent.

27 (4) Loan policing and work out activities, as specified in paragraphs (5) and (6),  
28 that are consistent with holding ownership indicia primarily to protect a security  
29 interest and consistent with a loan or obligation made, acquired, or held primarily  
30 for purposes other than investment purposes, do not constitute participation in the  
31 management of the property. The authority for the lender to take those actions may,  
32 but are not required to, be contained in contractual or other documents specifying  
33 requirements for financial, environmental, and other warranties, covenants,  
34 conditions, representations, or promises from the borrower. Loan policing and work  
35 out activities include all activities up to foreclosure or its equivalent.

36 (5) A lender who engages in loan policing activities prior to foreclosure or its  
37 equivalent is exempt from liability pursuant to this chapter if the lender does not, by  
38 those actions, participate in the management of the property. Those actions include,  
39 but are not limited to, all of the following:

40 (A) Requiring the borrower to conduct a removal or remedial action during the  
41 term of the security interest or loan or obligation.

1 (B) Requiring the borrower to comply or come into compliance with applicable  
2 federal, state, and local environmental and other laws during the term of the security  
3 interest or loan or obligation.

4 (C) Securing or exercising authority to monitor or inspect the property, including  
5 onsite inspections, or the business or financial condition of the borrower during the  
6 term of the security interest or loan or obligation.

7 (D) Taking other actions to adequately police the loan, obligation, or security  
8 interest, such as requiring the borrower to comply with any warranties, covenants,  
9 conditions, representations, or promises in connection with the security interest or  
10 loan or obligation.

11 (6)(A) A lender who engages in work out activities prior to foreclosure or its  
12 equivalents is exempt from liability pursuant to this chapter if the lender does not,  
13 by those actions, participate in the management of the property.

14 (B) “Work out” means those actions by which a lender, at any time prior to  
15 foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the  
16 borrower, or to preserve or prevent the diminution of the value of the property,  
17 security interest, or loan or obligation.

18 (C) Work out activities include, but are not limited to, all of the following:

19 (i) Restructuring or renegotiating the terms of the loan, obligation, or security  
20 interest.

21 (ii) Requiring payment of additional rent or interest.

22 (iii) Exercising rights pursuant to an assignment of accounts or other amounts  
23 owing to a lender.

24 (iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to  
25 amounts owing to a lender.

26 (v) Exercising forbearance.

27 (vi) Providing specific or general financial or other advice, suggestions,  
28 counseling, or guidance.

29 (vii) Exercising any right or remedy the lender is entitled to by law or under any  
30 warranties, covenants, conditions, representations, or promises from the borrower.

31 (7) A lender does not participate in the management of the property by taking any  
32 response action under Section 107(d)(1) of the Comprehensive Environmental  
33 Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).  
34 However, the lender may be liable for damages, as defined by this chapter, that  
35 occur as a result of the gross negligence or willful misconduct of the lender in ~~his~~  
36 ~~or her~~ the lender’s performance of a response action under Section 107 (d)(1) of the  
37 Comprehensive Environmental Response, Compensation and Liability Act of 1980  
38 (42 U.S.C. Sec. 9607(d)(1)).

39 (l) “Person” means any entity, including, but not limited to, an individual, estate,  
40 trust, firm, business trust, joint stock company, corporation, partnership, joint  
41 venture, limited liability company, association, or government. “Person” includes,  
42 but is not limited to, any city, county, district, the state, or the federal government,  
43 or any department, subdivision, or agency thereof.

1 (m)(1) “Primarily to protect a security interest” means that the indicia of  
2 ownership of a lender are held primarily for the purpose of securing payment or  
3 performance of an obligation.

4 (2) “Primarily to protect a security interest” does not include indicia of ownership  
5 held primarily for investment purposes or indicia of ownership held primarily for  
6 purposes other than as protection for a security interest. A lender may have other,  
7 secondary reasons for maintaining indicia of ownership, but the primary reason that  
8 any indicia of ownership are held shall be as protection for a security interest.

9 (n) “Property” means any real or personal property where hazardous materials are  
10 or were generated, handled, managed, deposited, stored, disposed of, placed,  
11 released, or otherwise have come to be located. In the context of a loan or obligation,  
12 “property” includes any real or personal property in which the obligor has or had an  
13 ownership, leasehold, or possessory interest, whether or not it was the subject of a  
14 security interest for the loan or obligation.

15 (o) “Release” has the same meaning as defined in ~~Section 25320~~, subdivision (a)  
16 of Section 68105.

17 (p) “Remedial action” has the same meaning as defined in subdivision (g) of  
18 Section 25260.

19 (q) “Removal” means the cleanup or removal of released hazardous materials  
20 from the environment or the taking of other actions that may be necessary to prevent,  
21 minimize, or mitigate damages that may otherwise result from a release or  
22 threatened release, as further defined in Section 101(23) of the Comprehensive  
23 Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec.  
24 9601(23)).

25 (r) “Security interest” means an interest in a property created or established for  
26 the purpose of securing a loan or obligation. Security interests include, but are not  
27 limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease.  
28 Security interests may also arise from transactions such as sale and leasebacks,  
29 conditional sales, installment sales, trust receipt transactions, certain assignments,  
30 factoring agreements, and accounts receivable financing arrangements and  
31 consignments if the transaction creates or establishes an interest in a property for  
32 the purpose of securing a loan or other obligation.

33 **Comment.** Section 25548.1(o) is amended to update cross-references in accordance with the  
34 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
35 the Health and Safety Code.

36 This section is also amended to eliminate gendered pronouns.

37 **§ 25548.4 (amended). Limitations of chapter**

38 SEC. \_\_. Section 25548.4 of the Health and Safety Code is amended to read:

39 25548.4. This chapter does not do any of the following:

40 (a) Affect any rights, defenses, or immunities that are available to any lender or  
41 fiduciary under any applicable law.

42 (b) Create any liability for any lender or fiduciary.

1 (c) Create any private right of action against any lender or fiduciary.

2 (d) Exempt or excuse a lender or fiduciary who operates or directs the operation,  
3 or maintains the operation, of the property from compliance with the operational  
4 requirements of applicable laws. Those operational requirements include, but are  
5 not limited to, permitting, reporting, monitoring, emission limitation, corrective  
6 action, financial responsibility and assurance requirements, requirements to take  
7 removal or remedial action to respond to a release or threatened release of hazardous  
8 materials caused by the lender or fiduciary and the requirements of Division 26  
9 (commencing with Section 39000) of this code or of Division 7 (commencing with  
10 Section 13000) of the Water Code. Operational requirements include the payment  
11 of fees, fines, and penalties, and compliance with any other enforcement provisions  
12 that are applicable as a result of the operation, or the direction of the operation, or  
13 the maintenance of the operation, of the property by the lender or fiduciary.

14 (e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for  
15 breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of  
16 Division 9 of the Probate Code.

17 (f) Affect any liabilities of a fiduciary estate.

18 (g) Exempt a lender from liability imposed by ~~Chapter 6.8 (commencing with~~  
19 ~~Section 25300) Part 2 (commencing with Section 68000) of Division 45~~ for a  
20 removal or remedial action or the recovery of damages relating to a release or  
21 threatened release of hazardous material, to the extent that the lender is a responsible  
22 party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental  
23 Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or  
24 (4)).

25 (h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5  
26 (commencing with Section 25100).

27 (i) Exempt or excuse a lender from liability under any state or local statute,  
28 regulation, or ordinance for a known or suspected release or known or suspected  
29 threatened release of hazardous materials caused by events or conditions occurring  
30 prior to foreclosure or its equivalent, unless, after taking possession of the property,  
31 the lender promptly takes each of the following actions in accordance with  
32 applicable law:

33 (1) Suspends operations with respect to that portion of the property where the  
34 known or suspected release or known or suspected threatened release occurred or  
35 may occur.

36 (2) Removes from the suspended operations and affected areas on the property,  
37 all hazardous material not released into the environment and secures the suspended  
38 operations.

39 (3) Reports any known or suspected releases of hazardous material.

40 (j) Limit the application or enforcement of ~~Section 25359.4 or 25359.5 Article 2~~  
41 ~~(commencing with Section 68675) or Article 4 (commencing with Section 68720)~~  
42 ~~of Chapter 4 of Part 2 of Division 45~~ or other state or local fencing, posting,  
43 securing, notification, or reporting laws with regard to property that is acquired by

1 a lender through foreclosure or its equivalent, to the extent that those requirements  
2 are otherwise applicable to the property.

3 (k) Exempt a lender from compliance with an administrative order requiring  
4 immediate and temporary measures to prevent, abate, or minimize an emergency  
5 caused by a release or threatened release of hazardous material at, from, or in  
6 connection with, any property that has been acquired by the lender through  
7 foreclosure or its equivalent, when all of the following circumstances exist:

8 (1) The release or threatened release presents an imminent and substantial  
9 endangerment to the public health or welfare or the environment.

10 (2) No other person who is viable and potentially responsible for the release or  
11 threatened release has been identified and located by the agency issuing the order,  
12 following a reasonable effort by the agency to identify and locate any ~~such person.~~  
13 person who is viable and potentially responsible.

14 (3) The costs and expenses incurred by the lender to comply with the  
15 administrative order do not exceed twenty-five thousand dollars (\$25,000).

16 (4) If the lender complies with the administrative order, the compliance would  
17 not, in and of itself, subject the lender to liability for a removal or remedial action  
18 or damages, fines, penalties, impositions, or assessments relating to the release or  
19 threatened release under any federal law.

20 (l)(1) Exempt a lender who has acquired title to property through foreclosure or  
21 its equivalent from operation and maintenance requirements that were established  
22 on the property as a result of a removal or remedial action conducted on the property.

23 (2) “Operation and maintenance requirements” include, but are not limited to,  
24 deed restrictions and requirements to maintain passive exposure controls and to  
25 perform monitoring. If there are requirements other than operation and maintenance  
26 requirements, which are applicable to the property to maintain the effectiveness of  
27 the removal or remediation action, the lender shall comply with those requirements  
28 unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency  
29 that it does not intend to comply with the requirements and the agency concurs.

30 (m) Require a lender to conduct, or require a lender to direct the taking of, an  
31 inspection of the property after foreclosure or its equivalent to qualify for the  
32 exemption provided by this chapter, and the liability of a lender shall not be based  
33 on, or affected by, the lender not conducting, or not requiring, an inspection of the  
34 property after foreclosure or its equivalent.

35 (n) Require a fiduciary to conduct or require an inspection of the property in a  
36 fiduciary estate to qualify for the exemption provided by this chapter and the  
37 liability of the fiduciary shall not be based on, or affected by, the fiduciary not  
38 conducting or not requiring an inspection prior to holding the property as part of the  
39 fiduciary estate.

40 **Comment.** Subdivisions (g) and (j) of Section 25548.4 are amended to update cross-references  
41 in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
42 25300) of Division 20 of the Health and Safety Code.

43 This section is also amended to make a technical change.

1 **§ 33459 (amended). Definitions**

2 SEC. \_\_. Section 33459 of the Health and Safety Code is amended to read:  
3 33459. For purposes of this article, the following terms shall have the following  
4 meanings:

5 (a) “Department” means the Department of Toxic Substances Control.

6 (b) “Director” means the Director of Toxic Substances Control.

7 (c) “Hazardous substance” means any hazardous substance as defined in  
8 subdivision (h) of Section 25281, and any reference to hazardous substance in the  
9 definitions referenced in this section shall be deemed to refer to hazardous  
10 substance, as defined in this subdivision.

11 (d) “Local agency” means a single local agency that is one of the following:

12 (1) A local agency authorized pursuant to Section 25283 to implement Chapter  
13 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with  
14 Section 25299.10) of, Division 20.

15 (2) A local officer who is authorized pursuant to Section 101087 to supervise a  
16 remedial action.

17 (3) An infrastructure and revitalization financing district created pursuant to  
18 Chapter 2.6 (commencing with Section 53369) or Chapter 2.10 (commencing with  
19 Section 53399) of Part 1 of Division 2 of Title 5 of the Government Code.

20 (e) “Qualified independent contractor” means an independent contractor who is  
21 any of the following:

22 (1) An engineering geologist who is certified pursuant to Section 7842 of the  
23 Business and Professions Code.

24 (2) A geologist who is registered pursuant to Section 7850 of the Business and  
25 Professions Code.

26 (3) A civil engineer who is registered pursuant to Section 6762 of the Business  
27 and Professions Code.

28 (f) “Release” means any release, as defined in ~~Section 25320~~; subdivision (a) of  
29 Section 68105.

30 (g) “Remedy” or “remove” means any action to assess, evaluate, investigate,  
31 monitor, remove, correct, clean up, or abate a release of a hazardous substance or to  
32 develop plans for those actions. “Remedy” includes any action set forth in Section  
33 ~~25322~~ 68125 and “remove” includes any action set forth in Section ~~25323~~; 68135.

34 (h) “Responsible party” means any person described in subdivision (a) of Section  
35 ~~25323.5~~ 68145 of this code or subdivision (a) of Section 13304 of the Water Code.

36 **Comment.** Section 33459 is amended to update cross-references in accordance with the  
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
38 the Health and Safety Code.

39 **§ 33459.3 (amended). Liability of agency for release addressed by completed action on**  
40 **property within a redevelopment project**

41 SEC. \_\_. Section 33459.3 of the Health and Safety Code is amended to read:

1 33459.3. (a) Notwithstanding any other provision of law, except as provided in  
2 Section 33459.7, an agency that undertakes and completes an action, or causes  
3 another person to undertake and complete an action pursuant to Section 33459.1, as  
4 specified in subdivision (c), to remedy or remove a hazardous substance release on,  
5 under, or from property within a redevelopment project, in accordance with a  
6 cleanup or remedial action plan prepared by a qualified independent contractor and  
7 approved by the department or a California regional water quality control board or  
8 the local agency, as appropriate, pursuant to subdivision (b), is not liable, with  
9 respect to that release only, under Division 7 (commencing with Section 13000) of  
10 the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7  
11 (commencing with Section 25280), or Chapter 6.75 (commencing with Section  
12 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20 of or  
13 Part 2 (commencing with Section 68000) of Division 45 of, this code, or any other  
14 state or local law providing liability for remedial or removal actions for releases of  
15 hazardous substances. If the remedial action was also performed pursuant to Chapter  
16 6.65 (commencing with Section 25260) of Division 20, and a certificate of  
17 completion is issued pursuant to subdivision (b) of Section 25264, the immunity  
18 from agency action provided by the certificate of completion, as specified in  
19 subdivision (c) of Section 25264, shall apply to the agency, in addition to the  
20 immunity conferred by this section. In the case of a remedial action performed  
21 pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for  
22 which the administering agency is a local agency, the limitations on the certificate  
23 of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of  
24 Section 25264 are limits on any immunity provided for by this section and  
25 subdivision (c) of Section 25264.

26 (b) Upon approval of any cleanup or remedial action plan, pursuant to applicable  
27 statutes and regulations, the director or the California regional water quality control  
28 board or the local agency, as appropriate, shall acknowledge, in writing, within 60  
29 days of the date of approval, that upon proper completion of the remedial or removal  
30 action in accordance with the plan, the immunity provided by this section shall apply  
31 to the agency.

32 (c) Notwithstanding any provision of law or policy providing for certification by  
33 a person conducting a remedial or removal action that the action has been properly  
34 completed, a determination that a remedial or removal action has been properly  
35 completed pursuant to this section shall be made only upon the affirmative approval  
36 of the director or the California regional water quality control board or the local  
37 agency, as appropriate. The department, California regional water quality control  
38 board, or local agency, as appropriate, shall, within 60 days of the date it finds that  
39 a remedial action has been completed, notify the agency in writing that the immunity  
40 provided by this section is in effect.

41 (d) The approval of a cleanup or remedial action plan under this section by a local  
42 agency shall also be subject to the concurrent approval of the department or a

1 California regional water quality control board when the agency receiving the  
2 approval was formed by the same entity of which the local agency is a part.

3 (e) Upon proper completion of a remedial or removal action, as specified in  
4 subdivision (c), the immunity from agency action provided by the certificate of  
5 completion provided pursuant to subdivision (c) of Section 25264 and the immunity  
6 provided by this section extends to all of the following, but only for the release or  
7 releases specifically identified in the approved cleanup or remedial action plan and  
8 not for any subsequent release or any release not specifically identified in the  
9 approved cleanup or remedial action plan:

10 (1) Any employee or agent of the agency, including an instrumentality of the  
11 agency authorized to exercise some, or all, of the powers of an agency within, or for  
12 the benefit of, a redevelopment project and any employee or agent of the  
13 instrumentality.

14 (2) Any person who enters into an agreement with an agency for the  
15 redevelopment of property, if the agreement requires the person to acquire property  
16 affected by a hazardous substance release or to remove or remedy a hazardous  
17 substance release with respect to that property.

18 (3) Any person who acquires the property after a person has entered into an  
19 agreement with an agency for redevelopment of the property as described in  
20 paragraph (2).

21 (4) Any person who provided financing to a person specified in paragraph (2) or  
22 (3).

23 (f) Notwithstanding any other provision of law, the immunity provided by this  
24 section does not extend to any of the following:

25 (1) Any person who was a responsible party for the release before entering into  
26 an agreement, acquiring property, or providing financing, as specified in subdivision  
27 (e).

28 (2) Any person specified in subdivision (a) or (e) for any subsequent release of a  
29 hazardous substance or any release of a hazardous substance not specifically  
30 identified in the approved cleanup or remedial action plan.

31 (3) Any contractor who prepares the cleanup or remedial action plan, or conducts  
32 the removal or remedial action.

33 (4) Any person who obtains an approval, as specified in subdivision (b), or a  
34 determination, as specified in subdivision (c), by fraud, negligent or intentional  
35 nondisclosure, or misrepresentation, and any person who knows before the approval  
36 or determination is obtained or before the person enters into an agreement, acquires  
37 the property or provides financing, as specified in subdivision (e), that the approval  
38 or determination was obtained by these means.

39 (g) The immunity provided by this section is in addition to any other immunity of  
40 an agency provided by law.

41 (h) This section does not impair any cause of action by an agency or any other  
42 party against the person, firm, or entity responsible for the hazardous substance

1 release which is the subject of the removal or remedial action taken by the agency  
2 or other person immune from liability pursuant to this section.

3 (i) This section does not apply to, or limit, alter, or restrict, any action for personal  
4 injury, property damage, or wrongful death.

5 (j) This section does not limit liability of a person described in paragraph (3) or  
6 (4) of subdivision (e) for damages under the Comprehensive Environmental  
7 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
8 9601 et seq.).

9 (k) This section does not establish, limit, or affect the liability of an agency for  
10 any release of a hazardous substance that is not investigated or remediated pursuant  
11 to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.

12 (l) The immunity provided for by this section is only conferred if both of the  
13 following apply:

14 (1) The action is in accordance with a cleanup or remedial action plan prepared  
15 by a qualified independent contractor and approved by the department or a  
16 California regional water quality control board or the local agency, as appropriate,  
17 pursuant to subdivision (b).

18 (2) The remedial or removal action is undertaken and properly completed, as  
19 specified in subdivision (c).

20 (m) The agency shall reimburse the department, the California regional water  
21 quality control board, and the local agency for costs incurred in reviewing or  
22 approving cleanup or remedial action plans pursuant to this section.

23 **Comment.** Section 33459.3(a) is amended to update cross-references in accordance with the  
24 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
25 the Health and Safety Code.

26 **§ 33459.4 (amended). Redevelopment agency cost recovery**

27 SEC. \_\_. Section 33459.4 of the Health and Safety Code is amended to read:

28 33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency  
29 undertakes action to remedy or remove, or to require others to remedy or remove,  
30 including compelling a responsible party through a civil action, to remedy or remove  
31 a release of hazardous substance, any responsible party or parties shall be liable to  
32 the redevelopment agency for the costs incurred in the action. An agency may not  
33 recover the costs of goods and services that were not procured in accordance with  
34 applicable procurement procedures. The amount of the costs shall include the  
35 interest on the costs accrued from the date of expenditure and reasonable attorney's  
36 fees and shall be recoverable in a civil action. Interest shall be calculated based on  
37 the average annual rate of return on an agency's investment of surplus funds for the  
38 fiscal year in which costs were incurred.

39 (b) The only defenses available to a responsible party shall be the defenses  
40 specified in subdivision (b) of Section ~~25323.5~~ 68145.

41 (c) An agency may recover any costs incurred to develop and to implement a  
42 cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3,

1 to the same extent the department is authorized to recover those costs. The scope  
2 and standard of liability for cost recovery pursuant to this section shall be the scope  
3 and standard of liability under the Comprehensive Environmental Response,  
4 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)  
5 as that act would apply to the department; provided, however, that any reference to  
6 hazardous substance therein shall be deemed to refer to hazardous substance as  
7 defined in subdivision (c) of Section 33459.

8 (d) An action for recovery of costs of a remedy or removal undertaken by a  
9 redevelopment agency under this section shall be commenced within three years  
10 after completion of the remedy or removal.

11 (e) The action to recover costs provided by this section is in addition to, and is not  
12 to be construed as restricting, any other cause of action available to a redevelopment  
13 agency.

14 (f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any  
15 other provision of state law or policy, an agency that undertakes and completes a  
16 remedial action, or otherwise causes a remedial action to be undertaken and  
17 completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on  
18 its ownership of property after a release occurred, for any costs that any responsible  
19 party for that release incurs to investigate or remediate the release or to compensate  
20 others for the effects of that release.

21 **Comment.** Section 33459.4 is amended to update cross-references in accordance with the  
22 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
23 the Health and Safety Code.

24 **§ 57008 (amended). Screening numbers**

25 SEC. \_\_. Section 57008 of the Health and Safety Code is amended to read:

26 57008. (a) For purposes of this section, the following definitions apply:

27 (1) “Agency” means the California Environmental Protection Agency.

28 (2) “Contaminant” means all of the following:

29 (A) A substance listed in Tables II and III of subparagraphs (A) and (B) of  
30 paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California  
31 Code of Regulations.

32 (B) The five halogenated hydrocarbon industrial solvents that, in the experience  
33 of the State Water Resources Control Board and the Department of Toxic  
34 Substances Control are most commonly found as contaminants at sites subject to  
35 remediation under the Carpenter-Presley-Tanner Hazardous Substances Account  
36 Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part 2  
37 (commencing with Section 68000) of Division 45) and the Porter-Cologne Water  
38 Quality Control Act (Division 7 (commencing with Section 13000) of the Water  
39 Code).

40 (C) Ten hazardous substances not included under subparagraphs (A) and (B) that,  
41 in the experience of the Department of Toxic Substances Control and the State  
42 Water Resources Control Board, are most commonly found as contaminants at sites

1 subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances  
2 Account Act (~~Chapter 6.8 (commencing with Section 25300) of Division 20~~) (Part  
3 2 (commencing with Section 68000) of Division 45) and the Porter-Cologne Water  
4 Quality Control Act (Division 7 (commencing with Section 13000) of the Water  
5 Code).

6 (3) “Screening number” means the concentration of a contaminant published by  
7 the agency as an advisory number pursuant to the process established in  
8 subdivisions (b) and (c). A screening number is solely an advisory number, and has  
9 no regulatory effect, and is published solely as a reference value that may be used  
10 by citizen groups, community organizations, property owners, developers, and local  
11 government officials to estimate the degree of effort that may be necessary to  
12 remediate a contaminated property. A screening number may not be construed as,  
13 and may not serve as, a level that can be used to require an agency to determine that  
14 no further action is required or a substitute for the cleanup level that is required to  
15 be achieved for a contaminant on a contaminated property. The public agency with  
16 jurisdiction over the remediation of a contaminated site shall establish the cleanup  
17 level for a contaminant pursuant to the requirements and the procedures of the  
18 applicable laws and regulations that govern the remediation of that contaminated  
19 property and the cleanup level may be higher or lower than a published screening  
20 number.

21 (b)(1) During the same period when the agency is carrying out the pilot study  
22 required by Section 57009 and preparing the informational document required by  
23 Section 57010, the agency shall initiate a scientific peer review of the screening  
24 levels published in Appendix 1 of Volume 2 of the technical report published by the  
25 San Francisco Regional Water Quality Control Board entitled “Application of Risk-  
26 Based Screening Levels and Decision-Making to Sites with Impacted Soil and  
27 Groundwater (Interim Final-August 2000).” The agency shall conduct the scientific  
28 peer review process in accordance with Section 57004, and shall limit the review to  
29 those substances specified in paragraph (2) of subdivision (a). The agency shall  
30 complete the peer review process on or before December 31, 2004.

31 (2) The agency, in cooperation with the Department of Toxic Substances Control,  
32 the State Water Resources Control Board, and the Office of Environmental Health  
33 Hazard Assessment, shall publish a list of screening numbers for contaminants listed  
34 in paragraph (2) of subdivision (a) for the protection of human health and safety,  
35 and shall report on the feasibility of establishing screening numbers to protect water  
36 quality and ecological resources. The agency shall determine the screening numbers  
37 using the evaluation set forth in ~~Section 25356.1.5~~ Article 13 (commencing with  
38 Section 69260) of Chapter 5 of Part 2 of Division 45 and the results of the peer  
39 review, and shall use the most stringent hazard criterion established pursuant to  
40 Subpart E of the National Oil and Hazardous Substances Pollution Contingency  
41 Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate  
42 screening levels for unrestricted land uses and a restricted, nonresidential use of

1 land. In determining each screening number, the agency shall consider all of the  
2 following:

3 (A) The toxicology of the contaminant, its adverse effects on human health and  
4 safety, biota, and its potential for causing environmental damage to natural  
5 resources, including, but not limited to, beneficial uses of the water of the state,  
6 including sources of drinking water.

7 (B) Risk assessments that have been prepared for the contaminant by federal or  
8 state agencies pursuant to environmental or public health laws, evaluations of the  
9 contaminant that have been prepared by epidemiological studies and occupational  
10 health programs, and risk assessments or other evaluations of the contaminant that  
11 have been prepared by governmental agencies or responsible parties as part of a  
12 project to remediate a contaminated property.

13 (C) Cleanup levels that have been established for the contaminant at sites that  
14 have been, or are being, investigated or remediated under ~~Chapter 6.8 (commencing~~  
15 ~~with Section 25300) of Division 20, Part 2 (commencing with Section 68000) of~~  
16 Division 45, or cleaned up or abated under Division 7 (commencing with Section  
17 13000) of the Water Code or under any other remediation program administered by  
18 a federal or local agency.

19 (D) Screening numbers that have been published by other agencies in the state, in  
20 other states, and by federal agencies.

21 (E) The results of external scientific peer review of the screening numbers made  
22 pursuant to Section 57004.

23 (c)(1) Before publishing the screening numbers pursuant to subdivision (b), the  
24 agency shall conduct two public workshops, one in the northern part of the state and  
25 the other in the southern part of the state, to brief interested parties on the scientific  
26 and policy bases for the development of the proposed screening numbers and to  
27 receive public comments.

28 (2) Following publication of the screening numbers pursuant to subdivision (b),  
29 the agency shall conduct three public workshops in various regions of the state to  
30 discuss the screening numbers and to receive public comments. The agency shall  
31 select an agency representative who shall serve as the chairperson for the  
32 workshops, and the agency shall ensure that ample opportunity is available for  
33 public involvement in the workshops. The deputy secretary for external affairs shall  
34 actively seek out participation in the workshops by citizen groups, environmental  
35 organizations, community-based organizations that restore and redevelop  
36 contaminated properties for park, school, residential, commercial, open-space or  
37 other community purposes, property owners, developers, and local government  
38 officials.

39 (d) Following the workshops required by subdivision (c), the agency shall revise  
40 the screening numbers as appropriate. The agency shall, from time to time, revise  
41 the screening numbers as necessary as experience is gained with their use and shall  
42 add screening numbers for contaminants to the list as information concerning  
43 remediation problems becomes available.

1 (e) The agency shall publish a guidance document for distribution to citizen  
2 groups, community-based organizations, property owners, developers, and local  
3 government officials that explains how screening numbers may be used to make  
4 judgments about the degree of effort that may be necessary to remediate  
5 contaminated properties, to facilitate the restoration and revitalization of  
6 contaminated property, to protect the waters of the state, and to make more efficient  
7 and effective decisions in local-level remediation programs.

8 (f) Nothing in this section affects the authority of the Department of Toxic  
9 Substances Control, the State Water Resources Control Board, or a regional water  
10 quality control board to take action under any applicable law or regulation regarding  
11 a release or threatened release of hazardous materials.

12 **Comment.** Section 57008(a)(2)(B), (a)(2)(C), (b)(2), and (b)(2)(C) are amended to update cross-  
13 references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with  
14 Section 25300) of Division 20 of the Health and Safety Code.

15 **§ 57010 (amended). Informational document regarding site investigation and remediation**  
16 **decisions**

17 SEC. \_\_. Section 57010 of the Health and Safety Code is amended to read:

18 57010. (a) On or before January 1, 2003, the California Environmental Protection  
19 Agency shall publish an informational document to assist citizen groups,  
20 community-based organizations, interested laypersons, property owners, local  
21 government officials, developers, environmental organizations, and environmental  
22 consultants to understand the factors that are taken into account, and the procedures  
23 that are followed, in making site investigation and remediation decisions under the  
24 Carpenter-Presley-Tanner Hazardous Substances Account Act (~~Chapter 6.8~~  
25 ~~(commencing with Section 25300) of Division 20~~) (Part 2 (commencing with  
26 Section 68000) of Division 45) and under the Porter-Cologne Water Quality Control  
27 Act (Division 7 (commencing with Section 13000) of the Water Code).

28 (b) The agency shall make the informational document required by this section  
29 available to any person who requests it at no charge and shall also post the public  
30 information manual on the agency's ~~Internet Web site.~~ internet website. The agency  
31 shall update both the printed informational document and the Web site at  
32 appropriate intervals as new legislation or revised policies affect the administration  
33 of the Carpenter-Presley-Tanner Hazardous Substances Account Act (~~Chapter 6.8~~  
34 ~~(commencing with Section 25300) of Division 20~~) (Part 2 (commencing with  
35 Section 68000) of Division 45) and the Porter-Cologne Water Quality Control Act  
36 (Division 7 (commencing with Section 13000) of the Water Code).

37 **Comment.** Section 57010 is amended to update cross-references in accordance with the  
38 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
39 the Health and Safety Code.

40 This section is also amended to make a technical change.

41 **§ 100885 (amended). Injunctive relief**

42 SEC. \_\_. Section 100885 of the Health and Safety Code is amended to read:

1 100885. (a) Any person who operates a laboratory that performs work that  
2 requires certification or TNI accreditation under Section 25198, 25298.5, ~~25358.4,~~  
3 68510, 110490, or 116390 of this code, or Section 13176 of the Water Code, who  
4 is not certified or TNI accredited to do so, may be enjoined from so doing by any  
5 court of competent jurisdiction upon suit by the state board.

6 (b) When the state board determines that any person has engaged in, or is engaged  
7 in, any act or practice that constitutes a violation of this article, or any regulation or  
8 order issued or adopted thereunder, the state board may bring an action in the  
9 superior court for an order enjoining these practices or for an order directing  
10 compliance and affording any further relief that may be required to ensure  
11 compliance with this article.

12 **Comment.** Section 100885 is amended to update cross-references in accordance with the  
13 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
14 the Health and Safety Code.

15 **§ 100886 (amended). Report by laboratory operator**

16 SEC. \_\_. Section 100886 of the Health and Safety Code is amended to read:

17 100886. Any person who operates a laboratory for the purposes specified in  
18 Section 25198, 25298.5, ~~25358.4,~~ 68510, or 116390 of this code, or Section 13176  
19 of the Water Code, shall report the full and complete results of all detected  
20 contamination and pollutants to the person or entity that submitted the material for  
21 testing.

22 **Comment.** Section 100886 is amended to update cross-references in accordance with the  
23 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
24 the Health and Safety Code.

25 **§ 100890 (amended). Civil penalties**

26 SEC. \_\_. Section 100890 of the Health and Safety Code is amended to read:

27 100890. (a) Any person who knowingly makes any false statement or  
28 representation in any application, record, or other document submitted, maintained,  
29 or used for purposes of compliance with this article, may be liable, as determined  
30 by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each  
31 separate violation or, for continuing violations, for each day that violation continues.

32 (b) Any person who operates a laboratory for purposes specified pursuant to  
33 Section 25198, 25298.5, ~~25358.4,~~ 68510, 110490, or 116390 of this code, or Section  
34 13176 of the Water Code that requires certification, who is not certified by the  
35 department pursuant to this article, may be liable, as determined by the court, for a  
36 civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation  
37 or, for continuing violations, for each day that violation continues.

38 (c) A laboratory that advertises or holds itself out to the public or its clients as  
39 having been certified for any field of testing without having a valid and current  
40 certificate in each field of testing identified by the advertisement or other  
41 representation may be liable, as determined by the court, for a civil penalty not to

1 exceed one thousand dollars (\$1,000) or, for continuing violations, for each day that  
2 violation continues.

3 (d) Each civil penalty imposed for any separate violation pursuant to this section  
4 shall be separate and in addition to any other civil penalty imposed pursuant to this  
5 section or any other provision of law.

6 **Comment.** Section 100890 is amended to update cross-references in accordance with the  
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
8 the Health and Safety Code.

9 **§ 101480 (amended). Supervision of remedial action by local officer**

10 SEC. \_\_. Section 101480 of the Health and Safety Code is amended to read:

11 101480. (a) For purposes of this article, the following definitions apply:

12 (1) “Local officer” means a county health officer, city health officer, or county  
13 director of environmental health.

14 (2) “Person” has the same meaning as set forth in Section 25118.

15 (3) “Release” has the same meaning as set forth in ~~Section 25320~~. subdivision (a)  
16 of Section 68105.

17 (4) “Remedial action” means any action taken by a responsible party to clean up  
18 a released waste, to abate the effects of a released waste, or to prevent, minimize, or  
19 mitigate damages that may result from the release of a waste. “Remedial action”  
20 includes the restoration, rehabilitation, or replacement of any natural resource  
21 damaged or lost as a result of the release of a waste.

22 (5) “Responsible party” means a person who, pursuant to this section, requests the  
23 local officer to supervise remedial action with respect to a released waste.

24 (6) “Waste” has the same meaning as set forth in subdivision (b) of Section  
25 101075.

26 (b) Whenever a release of waste occurs and remedial action is required, the  
27 responsible party for the release may request the local officer to supervise the  
28 remedial action. The local officer may agree to supervise the remedial action if ~~he~~  
29 ~~or she~~ the local officer determines, based on available information, that adequate  
30 staff resources and the requisite technical expertise and capabilities are available to  
31 adequately supervise the remedial action.

32 (c) Remedial action carried out under this section shall be carried out only  
33 pursuant to a remedial action agreement entered into by the local officer and the  
34 responsible party. The remedial action agreement shall specify the testing,  
35 monitoring, and analysis the responsible party will carry out to determine the type  
36 and extent of the contamination caused by the released waste that is the subject of  
37 the remedial action, the remedial actions that will be taken, and the cleanup goals  
38 that the local officer determines are necessary to protect human health or safety or  
39 the environment, and that, if met, constitute a permanent remedy to the release of  
40 the waste.

1 (d) A local officer who enters into a remedial action agreement, as described in  
2 subdivision (c), may, after giving the responsible party adequate notice, withdraw  
3 from the agreement at any time after making one of the following findings:

4 (1) The responsible party is not in compliance with the remedial action agreement.

5 (2) Appropriate staff resources, technical expertise, or technical capabilities are  
6 not available to adequately supervise the remedial action.

7 (3) The release of the waste that is the subject of the remedial action is of a  
8 sufficiently complex nature or may present such a significant potential hazard to  
9 human health or the environment that it should be referred to the Department of  
10 Toxic Substances Control or a California regional water quality control board.

11 (e) After determining that a responsible party has completed the actions required  
12 by the remedial action agreement and that a permanent remedy for the release of  
13 waste has been achieved, the local officer may provide the responsible party with a  
14 letter or other document that describes the release of waste that occurred and the  
15 remedial action taken, and certifies that the cleanup goals embodied in the remedial  
16 action agreement were accomplished.

17 **Comment.** Section 101480 is amended to update cross-references in accordance with the  
18 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
19 the Health and Safety Code.

20 This section is also amended to eliminate gendered pronouns.

21 **§ 101483 (amended). Sites not subject to article**

22 SEC. \_\_. Section 101483 of the Health and Safety Code is amended to read:

23 101483. This article shall not apply to any of the following:

24 (a) A hazardous substance release site listed pursuant to ~~Section 25356~~, Article 5  
25 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45, a site  
26 subject to an order or enforceable agreement issued pursuant to Section ~~25355.5 or~~  
27 ~~25358.3~~, 68870 or 69055, or a site where the Department of Toxic Substances  
28 Control has initiated action pursuant to Section ~~25355~~. Article 10 (commencing with  
29 Section 69130) of Chapter 5 of Part 2 of Division 45.

30 (b) A site subject to a corrective action order issued pursuant to Section 25187 or  
31 25187.7.

32 (c) A site subject to a cleanup and abatement order issued pursuant to Section  
33 13304 of the Water Code.

34 (d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

35 **Comment.** Section 101483 is amended to update cross-references in accordance with the  
36 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
37 the Health and Safety Code.

38 **Notes. (1)** Section 101483 cross-refers to an “order or enforceable agreement” pursuant to Section  
39 25355.5 or 25358.3. The cross-reference for each of these sections has been updated as described  
40 in turn below. **Absent comment, these proposed cross-reference updates will be presumed**  
41 **correct.**

42 Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections  
43 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section  
44 25355.5(a)) is the only one of those provisions that addresses the department’s authority to issue

1 orders or enter agreements and, thus, appears to be the only provision relevant to this cross-  
2 reference. For this reason, the cross-reference to Section 25355.5 has been updated to refer only to  
3 Section 69055.

4 Section 25358.3 has been proposed for recodification as several sections (proposed Sections  
5 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section 25358.3(a))  
6 is the only provision that addresses the department's issuance of orders to parties and, thus, appears  
7 to be the only provision that is relevant to this cross-reference. Proposed Section 68660 relates to  
8 relief sought in court, in which case the court would be the one to issue orders. However, it does  
9 not appear that court orders are relevant for this provision. For this reason, the cross-reference to  
10 Section 25358.3 has been updated to refer only to Section 68870.

11 (2) Section 101483 cross-refers to department initiation of action pursuant to Section 25355.  
12 Section 25355 has been proposed for recodification as multiple provisions (proposed Sections  
13 68850, 69005, 69130(a), and 69135).

14 Two provisions relate to the Governor's role in coordinating response actions and voluntary  
15 enforceable agreements for the department to oversee cleanup at a petroleum release site. Neither  
16 of those sections appear to be relevant to the purpose of this cross-reference.

17 The remaining two provisions, proposed Sections 69130(a) and 69135, expressly address  
18 department initiation of action at a site. These provisions, along with one other provision, deeming  
19 a party's failure to comply with an order or agreement as a failure to take timely action, comprise  
20 proposed Article 10 of Chapter 5.

21 The Commission proposes to amend the cross-reference to Section 25355 to refer to the article  
22 as a whole. It does not appear that the inclusion of the deeming provision described above would  
23 change the effect of this cross-reference. **Absent comment, this proposed cross-reference update**  
24 **will be presumed correct.**

25 **§ 101485 (amended). Construction of article**

26 SEC. \_\_. Section 101485 of the Health and Safety Code is amended to read:

27 101485. Nothing in this article shall be construed as prohibiting the Department  
28 of Toxic Substances Control from assuming jurisdiction over a release pursuant to  
29 ~~Chapter 6.8 (commencing with Section 25300) of Division 20, Part 2 (commencing~~  
30 ~~with Section 68000) of Division 45,~~ or a California regional water quality control  
31 board, or the State Water Resources Control Board from taking enforcement action  
32 against a release pursuant to Division 7 (commencing with Section 13000) of the  
33 Water Code.

34 **Comment.** Section 101485 is amended to update cross-references in accordance with the  
35 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
36 the Health and Safety Code.

38 LABOR CODE

39 **§ 142.7 (amended). Occupational standard concerning hazardous substance removal work**

40 SEC. \_\_. Section 142.7 of the Labor Code is amended to read:

41 142.7. (a) On or before October 1, 1987, the board shall adopt an occupational  
42 safety and health standard concerning hazardous substance removal work, so as to  
43 protect most effectively the health and safety of employees. The standard shall  
44 include, but not be limited to, requirements for all of the following:

1 (1) Specific work practices.

2 (2) Certification of all employees engaged in hazardous substance removal-related  
3 work, except that no certification shall be required for an employee whose only  
4 activity is the transportation of hazardous substances which are subject to the  
5 requirement for a certificate under Section 12804.1 of the Vehicle Code.

6 (3) Certification of supervisors with sufficient experience and authority to be  
7 responsible for hazardous substance removal work.

8 (4) Designation of a qualified person who shall be responsible for scheduling any  
9 air sampling, laboratory calibration of sampling equipment, evaluation of soil or  
10 other contaminated materials sampling results, and for conducting any equipment  
11 testing and evaluating the results of the tests.

12 (5) Requiring that a safety and health conference be held for all hazardous  
13 substance removal jobs before the start of actual work. The conference shall include  
14 representatives of the owner or contracting agency, the contractor, the employer,  
15 employees, and employee representatives, and shall include a discussion of the  
16 employer's safety and health program and the means, methods, devices, processes,  
17 practices, conditions, or operations which the employer intends to use in providing  
18 a safe and healthy place of employment.

19 (b) For purposes of this section, "hazardous substance removal work" means  
20 cleanup work at any of the following:

21 (1) A site where removal or remedial action is taken pursuant to either of the  
22 following:

23 (A) ~~Chapter 6.8 (commencing with Section 25300) of Division 20 Part 2~~  
24 (commencing with Section 68000) of Division 45 of the Health and Safety Code,  
25 regardless of whether the site is listed pursuant to ~~Section 25356 Article 5~~  
26 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45 of the  
27 Health and Safety Code.

28 (B) The federal Comprehensive Environmental Response, Compensation, and  
29 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

30 (2) A site where corrective action is taken pursuant to Section 25187 or 25200.10  
31 of the Health and Safety Code or the federal Resource Conservation and Recovery  
32 Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

33 (3) A site where cleanup of a discharge of a hazardous substance is required  
34 pursuant to Division 7 (commencing with Section 13000) of the Water Code.

35 (4) A site where removal or remedial action is taken because a hazardous  
36 substance has been discharged or released in an amount that is reportable pursuant  
37 to Section 13271 of the Water Code or the federal Comprehensive Environmental  
38 Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).  
39 "Hazardous substance removal work" does not include work related to a hazardous  
40 substance spill on a highway.

41 (c) Until the occupational safety and health standard required by subdivision (a)  
42 is adopted by the board and becomes effective, the occupational safety and health  
43 standard concerning hazardous substance removal work shall be the standard

1 adopted by the federal government and codified in Section 1910.120 of Title 29 of  
2 the Code of Federal Regulations. In addition, before actual work is started on a  
3 hazardous substance removal job, a safety and health conference shall be held that  
4 shall include the participants and involve a discussion of the subjects described in  
5 paragraph (5) of subdivision (a).

6 **Comment.** Section 142.7(b)(1)(A) is amended to update cross-references in accordance with the  
7 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
8 the Health and Safety Code.

9 PENAL CODE

10 **§ 803 (amended). Tolling or extension of limitation of time**

11 SEC. \_\_. Section 803 of the Penal Code is amended to read:

12 803. (a) Except as provided in this section, a limitation of time prescribed in this  
13 chapter is not tolled or extended for any reason.

14 (b) No time during which prosecution of the same person for the same conduct is  
15 pending in a court of this state is a part of a limitation of time prescribed in this  
16 chapter.

17 (c) A limitation of time prescribed in this chapter does not commence to run until  
18 the discovery of an offense described in this subdivision. This subdivision applies  
19 to an offense punishable by imprisonment in the state prison or imprisonment  
20 pursuant to subdivision (h) of Section 1170, a material element of which is fraud or  
21 breach of a fiduciary obligation, the commission of the crimes of theft or  
22 embezzlement upon an elder or dependent adult, or the basis of which is misconduct  
23 in office by a public officer, employee, or appointee, including, but not limited to,  
24 the following offenses:

25 (1) Grand theft of any type, forgery, falsification of public records, or acceptance  
26 of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a  
27 public employee, including, but not limited to, a violation of Section 68, 86, or 93.

28 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

29 (3) A violation of Section 25540, of any type, or Section 25541 of the  
30 Corporations Code.

31 (4) A violation of Section 1090 or 27443 of the Government Code.

32 (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107  
33 of the Welfare and Institutions Code.

34 (6) Felony insurance fraud in violation of Section 548 or 550 of this code or  
35 former Section 1871.1, or Section 1871.4, of the Insurance Code.

36 (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and  
37 Professions Code.

38 (8) A violation of Section 22430 of the Business and Professions Code.

39 (9) A violation of Section 103800 of the Health and Safety Code.

40 (10) A violation of Section 529a.

41 (11) A violation of subdivision (d) or (e) of Section 368.

1 (d) If the defendant is out of the state when or after the offense is committed, the  
2 prosecution may be commenced as provided in Section 804 within the limitations  
3 of time prescribed by this chapter, and no time up to a maximum of three years  
4 during which the defendant is not within the state shall be a part of those limitations.

5 (e) A limitation of time prescribed in this chapter does not commence to run until  
6 the offense has been discovered, or could have reasonably been discovered, with  
7 regard to offenses under Division 7 (commencing with Section 13000) of the Water  
8 Code, under Chapter 6.5 (commencing with Section 25100) ~~of, or~~ Chapter 6.7  
9 (commencing with Section 25280) ~~of, or Chapter 6.8 (commencing with Section~~  
10 ~~25300) of, or~~ Division 20 of, or Part 4 (commencing with Section 41500) of Division  
11 26 of, or Part 2 (commencing with Section 68000) of Division 45 of, the Health and  
12 Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with  
13 Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of  
14 Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of  
15 Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of,  
16 the Business and Professions Code.

17 (f)(1) Notwithstanding any other limitation of time described in this chapter, if  
18 subdivision (b) of Section 799 does not apply, a criminal complaint may be filed  
19 within one year of the date of a report to a California law enforcement agency by a  
20 person of any age alleging that ~~he or she,~~ the person, while under 18 years of age,  
21 was the victim of a crime described in Section 261, 286, 287, 288, 288.5, or 289,  
22 former Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of  
23 1991 relating to penetration by an unknown object.

24 (2) This subdivision applies only if all of the following occur:

25 (A) The limitation period specified in Section 800, 801, or 801.1, whichever is  
26 later, has expired.

27 (B) The crime involved substantial sexual conduct, as described in subdivision (b)  
28 of Section 1203.066, excluding masturbation that is not mutual.

29 (C) There is independent evidence that corroborates the victim's allegation. If the  
30 victim was 21 years of age or older at the time of the report, the independent  
31 evidence shall clearly and convincingly corroborate the victim's allegation.

32 (3) No evidence may be used to corroborate the victim's allegation that otherwise  
33 would be inadmissible during trial. Independent evidence does not include the  
34 opinions of mental health professionals.

35 (4)(A) In a criminal investigation involving any of the crimes listed in paragraph  
36 (1) committed against a child, when the applicable limitations period has not  
37 expired, that period shall be tolled from the time a party initiates litigation  
38 challenging a grand jury subpoena until the end of the litigation, including any  
39 associated writ or appellate proceeding, or until the final disclosure of evidence to  
40 the investigating or prosecuting agency, if that disclosure is ordered pursuant to the  
41 subpoena after the litigation.

42 (B) Nothing in this subdivision affects the definition or applicability of any  
43 evidentiary privilege.

1 (C) This subdivision shall not apply if a court finds that the grand jury subpoena  
2 was issued or caused to be issued in bad faith.

3 (g)(1) Notwithstanding any other limitation of time described in this chapter, a  
4 criminal complaint may be filed within one year of the date on which the identity of  
5 the suspect is conclusively established by DNA testing, if both of the following  
6 conditions are met:

7 (A) The crime is one that is described in subdivision (c) of Section 290.

8 (B) The offense was committed prior to January 1, 2001, and biological evidence  
9 collected in connection with the offense is analyzed for DNA type no later than  
10 January 1, 2004, or the offense was committed on or after January 1, 2001, and  
11 biological evidence collected in connection with the offense is analyzed for DNA  
12 type no later than two years from the date of the offense.

13 (2) For purposes of this section, “DNA” means deoxyribonucleic acid.

14 (h) For any crime, the proof of which depends substantially upon evidence that  
15 was seized under a warrant, but which is unavailable to the prosecuting authority  
16 under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
17 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or  
18 subdivision (c) of Section 1524, relating to claims of evidentiary privilege or  
19 attorney work product, the limitation of time prescribed in this chapter shall be  
20 tolled from the time of the seizure until final disclosure of the evidence to the  
21 prosecuting authority. Nothing in this section otherwise affects the definition or  
22 applicability of any evidentiary privilege or attorney work product.

23 (i) Notwithstanding any other limitation of time described in this chapter, a  
24 criminal complaint may be filed within one year of the date on which a hidden  
25 recording is discovered related to a violation of paragraph (2) or (3) of subdivision  
26 (j) of Section 647.

27 (j) Notwithstanding any other limitation of time described in this chapter, if a  
28 person flees the scene of an accident that caused death or permanent, serious injury,  
29 as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal  
30 complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of  
31 the Vehicle Code may be filed within the applicable time period described in Section  
32 801 or 802 or one year after the person is initially identified by law enforcement as  
33 a suspect in the commission of the offense, whichever is later, but in no case later  
34 than six years after the commission of the offense.

35 (k) Notwithstanding any other limitation of time described in this chapter, if a  
36 person flees the scene of an accident, a criminal complaint brought pursuant to  
37 paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the  
38 applicable time period described in Section 801 or 802, or one year after the person  
39 is initially identified by law enforcement as a suspect in the commission of that  
40 offense, whichever is later, but in no case later than six years after the commission  
41 of the offense.

42 (l) A limitation of time prescribed in this chapter does not commence to run until  
43 the discovery of an offense involving the offering or giving of a bribe to a public

1 official or public employee, including, but not limited to, a violation of Section 67,  
2 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

3 (m) Notwithstanding any other limitation of time prescribed in this chapter, if a  
4 person actively conceals or attempts to conceal an accidental death in violation of  
5 Section 152, a criminal complaint may be filed within one year after the person is  
6 initially identified by law enforcement as a suspect in the commission of that  
7 offense, provided, however, that in any case a complaint may not be filed more than  
8 four years after the commission of the offense.

9 **Comment.** Section 803(e) is amended to update cross-references in accordance with the  
10 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
11 the Health and Safety Code.

12 This section is also amended to eliminate gendered pronouns.

### 13 PUBLIC RESOURCES CODE

#### 14 § 21083.8.1 (amended). Environmental review of reuse plan for military base

15 SEC. \_\_. Section 21083.8.1 of the Public Resources Code is amended to read:

16 21083.8.1. (a)(1) For purposes of this section, “reuse plan” for a military base  
17 means an initial plan for the reuse of a military base adopted by a local government  
18 or a redevelopment agency in the form of a general plan, general plan amendment,  
19 specific plan, redevelopment plan, or other planning document, except that the reuse  
20 plan shall also consist of a statement of development policies, include a diagram or  
21 diagrams illustrating its provisions, and make the designation required in paragraph  
22 (2). “Military base” or “base” means a military base or reservation either closed or  
23 realigned by, or scheduled for closure or realignment by, the federal government.

24 (2) The reuse plan shall designate the proposed general distribution and general  
25 location of development intensity for housing, business, industry, open space,  
26 recreation, natural resources, public buildings and grounds, roads and other  
27 transportation facilities, infrastructure, and other categories of public and private  
28 uses of land.

29 (b)(1) When preparing and certifying an environmental impact report for a reuse  
30 plan, including when utilizing an environmental impact statement pursuant to  
31 Section 21083.5, the determination of whether the reuse plan may have a significant  
32 effect on the environment may be made in the context of the physical conditions  
33 that were present at the time that the federal decision became final for the closure  
34 or realignment of the base. The no project alternative analyzed in the environmental  
35 impact report shall discuss the existing conditions on the base, as they exist at the  
36 time that the environmental impact report is prepared, as well as what could be  
37 reasonably expected to occur in the foreseeable future if the reuse plan were not  
38 approved, based on current plans and consistent with available infrastructure and  
39 services.

40 (2) For purposes of this division, all public and private activities taken pursuant  
41 to, or in furtherance of, a reuse plan shall be deemed to be a single project. However,

1 further environmental review of any ~~such~~ public or private activity taken pursuant  
2 to, or in furtherance of, a reuse plan shall be conducted if any of the events specified  
3 in Section 21166 have occurred.

4 (c) Prior to preparing an environmental impact report for which a lead agency  
5 chooses to utilize the provisions of this section, the lead agency shall do all of the  
6 following:

7 (A) Hold a public hearing at which is discussed the federal environmental impact  
8 statement prepared for, or in the process of being prepared for, the closure of the  
9 military base. The discussion shall include the significant effects on the environment  
10 examined in the environmental impact statement, potential methods of mitigating  
11 those effects, including feasible alternatives, and the mitigative effects of federal,  
12 state, and local laws applicable to future nonmilitary activities. Prior to the close of  
13 the hearing, the lead agency may specify the baseline conditions for the reuse plan  
14 environmental impact report prepared, or in the process of being prepared, for the  
15 closure of the base. The lead agency may specify particular physical conditions that  
16 it will examine in greater detail than were examined in the environmental impact  
17 statement. Notice of the hearing shall be given as provided in Section 21092. The  
18 hearing may be continued from time to time.

19 (B) Identify pertinent responsible agencies and trustee agencies and consult with  
20 those agencies prior to the public hearing as to the application of their regulatory  
21 policies and permitting standards to the proposed baseline for environmental  
22 analysis, as well as to the reuse plan and planned future nonmilitary land uses of the  
23 base. The affected agencies shall have not less than 30 days prior to the public  
24 hearing to review the proposed reuse plan and to submit their comments to the lead  
25 agency.

26 (C) At the close of the hearing, the lead agency shall state in writing how the lead  
27 agency intends to integrate the baseline for analysis with the reuse planning and  
28 environmental review process, taking into account the adopted environmental  
29 standards of the community, including, but not limited to, the applicable general  
30 plan, specific plan, and redevelopment plan, and including other applicable  
31 provisions of adopted congestion management plans, habitat conservation or natural  
32 communities conservation plans, integrated waste management plans, and county  
33 hazardous waste management plans.

34 (D) At the close of the hearing, the lead agency shall state, in writing, the specific  
35 economic or social reasons, including, but not limited to, new job creation,  
36 opportunities for employment of skilled workers, availability of low- and moderate-  
37 income housing, and economic continuity, which support the selection of the  
38 baseline.

39 (d)(1) Nothing in this section shall in any way limit the scope of a review or  
40 determination of significance of the presence of hazardous or toxic wastes,  
41 substances, or materials including, but not limited to, contaminated soils and  
42 groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or

1 materials be constrained by prior levels of activity that existed at the time that the  
2 federal agency decision to close the military base became final.

3 (2) This section does not apply to any project undertaken pursuant to Chapter 6.5  
4 (commencing with Section 25100) of, ~~or Chapter 6.8 (commencing with Section~~  
5 ~~25300) of~~, Division 20 of , or Part 2 (commencing with Section 68000) of Division  
6 45 of, the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality  
7 Control Act (Division 7 (commencing with Section 13000) of the Water Code).

8 (3) This section may apply to any reuse plan environmental impact report for  
9 which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued  
10 within one year from the date that the federal record of decision was rendered for  
11 the military base closure or realignment and reuse, or prior to January 1, 1997,  
12 whichever is later, if the environmental impact report is completed and certified  
13 within five years from the date that the federal record of decision was rendered.

14 (e) All subsequent development at the military base shall be subject to all  
15 applicable federal, state, or local laws, including, but not limited to, those relating  
16 to air quality, water quality, traffic, threatened and endangered species, noise, and  
17 hazardous or toxic wastes, substances, or materials.

18 **Comment.** Section 21083.8.1(d)(2) is amended to update cross-references in accordance with  
19 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
20 of the Health and Safety Code.

21 This section is also amended to make a technical change.

22 **§ 21098 (amended). Notices to military service**

23 SEC. \_\_. Section 21098 of the Public Resources Code is amended to read:

24 21098. (a) For the purposes of this section, the following terms have the following  
25 meanings:

26 (1) “Low-level flight path” includes any flight path for any aircraft owned,  
27 maintained, or that is under the jurisdiction of the United States Department of  
28 Defense that flies lower than 1,500 feet above ground level, as indicated in the  
29 United States Department of Defense Flight Information Publication, “Area  
30 Planning Military Training Routes: North and South America (AP/1B)” published  
31 by the United States National Imagery and Mapping Agency.

32 (2) “Military impact zone” includes any area, including airspace, that meets both  
33 of the following criteria:

34 (A) Is within two miles of a military installation, including, but not limited to, any  
35 base, military airport, camp, post, station, yard, center, homeport facility for a ship,  
36 or any other military activity center that is under the jurisdiction of the United States  
37 Department of Defense.

38 (B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres  
39 of city incorporated land.

40 (3) “Military service” means any branch of the United States Armed Forces.

41 (4) “Special use airspace” means the area underlying the airspace that is  
42 designated for training, research, development, or evaluation for a military service,

1 as that area is established by the United States Department of Defense Flight  
2 Information Publication, “Area Planning: Special Use Airspace: North and South  
3 America (AP/1A)” published by the United States National Imagery and Mapping  
4 Agency.

5 (b) If the United States Department of Defense or a military service notifies a lead  
6 agency of the contact office and address for the military service and the specific  
7 boundaries of a low-level flight path, military impact zone, or special use airspace,  
8 the lead agency shall submit notices, as required pursuant to Sections 21080.4 and  
9 21092, to the military service if the project is within those boundaries and any of  
10 the following apply:

11 (1) The project includes a general plan amendment.

12 (2) The project is of statewide, regional, or areawide significance.

13 (3) The project is required to be referred to the airport land use commission, or  
14 appropriately designated body, pursuant to Article 3.5 (commencing with Section  
15 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

16 (c) The requirement to submit notices imposed by this section does not apply to  
17 any of the following:

18 (1) Response actions taken pursuant to ~~Chapter 6.8 (commencing with Section~~  
19 ~~25300) of Division 20~~ Part 2 (commencing with Section 68000) of Division 45  
20 of the Health and Safety Code.

21 (2) Response actions taken pursuant to Chapter 6.85 (commencing with Section  
22 25396) of Division 20 of the Health and Safety Code.

23 (3) Sites subject to corrective action orders issued pursuant to Section 25187 of  
24 the Health and Safety Code.

25 (d)(1) The effect or potential effect that a project may have on military activities  
26 does not itself constitute an adverse effect on the environment for the purposes of  
27 this division.

28 (2) Notwithstanding paragraph (1), a project’s impact on military activities may  
29 cause, or be associated with, adverse effects on the environment that are subject to  
30 the requirements of this division, including, but not limited to, Section 21081.

31 **Comment.** Section 21098(c)(1) is amended to update cross-references in accordance with the  
32 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
33 the Health and Safety Code.

34 **§ 21151.8 (amended). Environmental review for schoolsite purchase or school construction**

35 SEC. \_\_. Section 21151.8 of the Public Resources Code is amended to read:

36 21151.8. (a) An environmental impact report shall not be certified or a negative  
37 declaration shall not be approved for a project involving the purchase of a schoolsite  
38 or the construction of a new elementary or secondary school by a school district  
39 unless all of the following occur:

40 (1) The environmental impact report or negative declaration includes information  
41 that is needed to determine if the property proposed to be purchased, or to be  
42 constructed upon, is any of the following:

1 (A) The site of a current or former hazardous waste disposal site or solid waste  
2 disposal site and, if so, whether the wastes have been removed.

3 (B) A hazardous substance release site identified by the Department of Toxic  
4 Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5  
5 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45 of the  
6 Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8~~  
7 (commencing with Section 25300) of ~~Division 20~~ Part 2 (commencing with Section  
8 68000) of Division 45 of the Health and Safety Code.

9 (C) A site that contains one or more pipelines, situated underground or  
10 aboveground, that carries hazardous substances, extremely hazardous substances,  
11 or hazardous wastes, unless the pipeline is a natural gas line that is used only to  
12 supply natural gas to that school or neighborhood, or other nearby schools.

13 (D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway  
14 or other busy traffic corridor.

15 (2)(A) The school district, as the lead agency, in preparing the environmental  
16 impact report or negative declaration has notified in writing and consulted with the  
17 administering agency in which the proposed schoolsite is located, pursuant to  
18 Section 2735.3 of Title 19 of the California Code of Regulations, and with any air  
19 pollution control district or air quality management district having jurisdiction in  
20 the area, to identify both permitted and nonpermitted facilities within that district's  
21 authority, including, but not limited to, freeways and busy traffic corridors, large  
22 agricultural operations, and railyards, within one-fourth of a mile of the proposed  
23 schoolsite, that might reasonably be anticipated to emit hazardous emissions or  
24 handle hazardous or extremely hazardous substances or waste. The notification by  
25 the school district, as the lead agency, shall include a list of the locations for which  
26 information is sought.

27 (B) Each administering agency, air pollution control district, or air quality  
28 management district receiving written notification from a lead agency to identify  
29 facilities pursuant to subparagraph (A) shall provide the requested information and  
30 provide a written response to the lead agency within 30 days of receiving the  
31 notification. The environmental impact report or negative declaration shall be  
32 conclusively presumed to comply with subparagraph (A) as to the area of  
33 responsibility of an agency that does not respond within 30 days.

34 (C) If the school district, as a lead agency, has carried out the consultation required  
35 by subparagraph (A), the environmental impact report or the negative declaration  
36 shall be conclusively presumed to comply with subparagraph (A), notwithstanding  
37 any failure of the consultation to identify an existing facility or other pollution  
38 source specified in subparagraph (A).

39 (3) The governing board of the school district makes one of the following written  
40 findings:

41 (A) Consultation identified no facilities of this type or other significant pollution  
42 sources specified in paragraph (2).

1 (B) The facilities or other pollution sources specified in paragraph (2) exist, but  
2 one of the following conditions applies:

3 (i) The health risks from the facilities or other pollution sources do not and will  
4 not constitute an actual or potential endangerment of public health to persons who  
5 would attend or be employed at the proposed school.

6 (ii) Corrective measures required under an existing order by another agency  
7 having jurisdiction over the facilities or other pollution sources will, before the  
8 school is occupied, result in the mitigation of all chronic or accidental hazardous air  
9 emissions to levels that do not constitute an actual or potential endangerment of  
10 public health to persons who would attend or be employed at the proposed school.  
11 If the governing board makes a finding pursuant to this clause, it shall also make a  
12 subsequent finding, prior to occupancy of the school, that the emissions have been  
13 so mitigated.

14 (iii) For a schoolsite with a boundary that is within 500 feet of the edge of the  
15 closest traffic lane of a freeway or other busy traffic corridor, the governing board  
16 of the school district determines, through analysis pursuant to paragraph (2) of  
17 subdivision (b) of Section 44360 of the Health and Safety Code, based on  
18 appropriate air dispersion modeling, and after considering any potential mitigation  
19 measures, that the air quality at the proposed site is such that neither short-term nor  
20 long-term exposure poses significant health risks to pupils.

21 (C) The facilities or other pollution sources specified in paragraph (2) exist, but  
22 conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the  
23 school district is unable to locate an alternative site that is suitable due to a severe  
24 shortage of sites that meet the requirements in subdivision (a) of Section 17213 of  
25 the Education Code. If the governing board makes this finding, the governing board  
26 shall adopt a statement of overriding considerations pursuant to Section 15093 of  
27 Title 14 of the California Code of Regulations.

28 (b) As used in this section, the following definitions shall apply:

29 (1) “Hazardous substance” means any substance defined in ~~Section 25316~~  
30 subdivision (a) of Section 68075 of the Health and Safety Code.

31 (2) “Extremely hazardous substances” means an extremely hazardous substance  
32 as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the  
33 Health and Safety Code.

34 (3) “Hazardous waste” means any waste defined in Section 25117 of the Health  
35 and Safety Code.

36 (4) “Hazardous waste disposal site” means any site defined in Section 25114 of  
37 the Health and Safety Code.

38 (5) “Hazardous air emissions” means emissions into the ambient air of air  
39 contaminants that have been identified as a toxic air contaminant by the State Air  
40 Resources Board or by the air pollution control officer for the jurisdiction in which  
41 the project is located. As determined by the air pollution control officer, hazardous  
42 air emissions also means emissions into the ambient air from any substances

1 identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and  
2 Safety Code.

3 (6) “Administering agency” means an agency authorized pursuant to Section  
4 25502 of the Health and Safety Code to implement and enforce Chapter 6.95  
5 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

6 (7) “Handle” means handle as defined in Article 1 (commencing with Section  
7 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

8 (8) “Facilities” means any source with a potential to use, generate, emit, or  
9 discharge hazardous air pollutants, including, but not limited to, pollutants that meet  
10 the definition of a hazardous substance, and whose process or operation is identified  
11 as an emission source pursuant to the most recent list of source categories published  
12 by the California Air Resources Board.

13 (9) “Freeway or other busy traffic corridors” means those roadways that, on an  
14 average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in  
15 Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area,  
16 as defined in Section 50104.7 of the Health and Safety Code.

17 **Comment.** Section 21151.8(a)(1)(B) and (b)(1) are amended to update cross-references in  
18 accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section  
19 25300) of Division 20 of the Health and Safety Code.

20 **§ 37016 (amended). Approval of proposed property contribution**

21 SEC. \_\_\_. Section 37016 of the Public Resources Code is amended to read:

22 37016. (a) The board shall grant approval of a proposed contribution of property  
23 under the program only upon a determination that:

24 (1)(A) The donation of property satisfies the requirements for a qualified  
25 contribution pursuant to Section 170 of Title 26 of the United States Code. If only  
26 a portion (either an undivided fractional interest in the entire property or one or more  
27 discrete parcels) of a proposed conveyance of property satisfies the requirements of  
28 Section 170 of Title 26 of the United States Code, or if the property is sold for less  
29 than fair market value, only that portion, or the amount representing the difference  
30 between the amount paid by the donee and the fair market value, shall be eligible  
31 for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United  
32 States Code. The board may segregate eligible and ineligible interests in property  
33 proposed to be contributed pursuant to this division. The donor shall receive no  
34 other valuable consideration for the donation of property subject to the tax credit.

35 (B) For purposes of this division, if the property is proposed to be donated to  
36 satisfy a condition imposed upon the donor by any lease, permit, license, certificate,  
37 or other entitlement for use issued by one or more public agencies, including, but  
38 not limited to, the mitigation of significant effects on the environment of a project  
39 pursuant to an approved environmental impact report or mitigated negative  
40 declaration required pursuant to the California Environmental Quality Act (Division  
41 13 (commencing with Section 21000)), that property shall not qualify for the credit  
42 provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

1 (2) There has been no release or threatened release of a hazardous material on the  
2 property, unless all of the following occur:

3 (i) (A) A final remedy in response to the release has been approved by the  
4 Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with  
5 Section 25100) of, ~~Chapter 6.8 (commencing with Section 25300) of,~~ or Chapter  
6 6.85 (commencing with Section 25396) of, Division 20 of, or Part 2 (commencing  
7 with Section 68000) of Division 45 of, the Health and Safety Code, or the  
8 appropriate California regional water quality control board pursuant to Chapter 6.7  
9 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

10 (ii) (B) The donor or donee have agreed to implement the final remedy approved  
11 pursuant to ~~clause (i).~~ subparagraph (A).

12 (iii) (C) The donor or donee have agreed to fund and have made adequate funding  
13 available to pay for the response action, as defined by Section ~~25323.3~~ 68140 of the  
14 Health and Safety Code.

15 (b) Notwithstanding paragraph (2) of subdivision (a), a donation of property  
16 containing hazardous materials may be accepted under the program without  
17 satisfying the requirements of paragraph (2) of subdivision (a) if the donee  
18 determines, based on written findings from the Department of Toxic Substances  
19 Control and the California regional water quality control board with jurisdiction  
20 over the property, that the hazardous materials present will pose no substantial risk  
21 to human health or the environment and no substantial risk of liability on the donee  
22 under the conditions under which the property will be used. The Department of  
23 Toxic Substances Control and the California regional water quality control board  
24 with jurisdiction over the property shall carry out their normal due diligence when  
25 developing the written findings that will be the basis for the written determination  
26 regarding the presence and risk of toxic materials on the property by the Department  
27 of Toxic Substances Control or the regional board, whichever is applicable. As used  
28 in this subdivision, “hazardous materials” has the same meaning as contained in  
29 subdivision (d) of Section 25260 of the Health and Safety Code.

30 **Comment.** Section 37016(a)(2) is amended to update cross-references in accordance with the  
31 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
32 the Health and Safety Code.

33 This section is also amended to make a technical change.

34 **§ 47004 (amended). “Hazardous waste”**

35 SEC. \_\_. Section 47004 of the Public Resources Code is amended to read:

36 47004. For purposes of this chapter, “hazardous waste” has the same meaning as  
37 defined in Section 25117 of the Health and Safety Code, and “hazardous substance”  
38 has the same meaning as defined in ~~Section 25316~~ subdivision (a) of Section 68075  
39 of the Health and Safety Code.

40 **Comment.** Section 47004 is amended to update cross-references in accordance with the  
41 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
42 the Health and Safety Code.

1 **§ 48020 (amended). General provisions regarding codisposal site cleanup**

2 SEC. \_\_. Section 48020 of the Public Resources Code is amended to read:

3 48020. (a) For purposes of this article, the following terms have the following  
4 meaning:

5 (1) “Codisposal site” means a hazardous substance release site listed pursuant to  
6 ~~Section 25356~~ Article 5 (commencing with Section 68760) of Chapter 4 of Part 2  
7 of Division 45 of the Health and Safety Code, where the disposal of hazardous  
8 substances, hazardous waste, and solid waste has occurred.

9 (2) “Trust fund” means the Solid Waste Disposal Site Cleanup Trust Fund created  
10 pursuant to Section 48027.

11 (b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid  
12 waste disposal sites and for the cleanup of solid waste at codisposal sites where the  
13 responsible party either cannot be identified or is unable or unwilling to pay for  
14 timely remediation, and where cleanup is needed to protect public health and safety  
15 or the environment.

16 (c) The board shall not expend more than 5 percent of the funds appropriated for  
17 the purpose of the program by a statute other than the Budget Act to administer that  
18 program, unless a different amount is otherwise appropriated to administer the  
19 program in the annual Budget Act. If a different amount is appropriated to  
20 administer the program in the annual Budget Act, it shall be set forth in a separate  
21 line item. All remaining funds appropriated for the purposes of the program shall be  
22 expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid  
23 waste facilities, disposal sites, sites involving solid waste handling, and for solid  
24 waste at codisposal sites.

25 **Comment.** Section 48020 is amended to update cross-references in accordance with the  
26 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
27 the Health and Safety Code.

28 REVENUE AND TAXATION CODE

29 **§ 402.3 (amended). Reassessment of land subject to land use restrictions**

30 SEC. \_\_. Section 402.3 of the Revenue and Taxation Code is amended to read:

31 402.3. An assessor shall consider any restrictive covenant, easement, restriction,  
32 or servitude adopted pursuant to Section 25202.5, 25222.1, or ~~25355.5~~ 69055 of the  
33 Health and Safety Code or any restriction, easement, covenant, or servitude imposed  
34 pursuant to Section 25230 of the Health and Safety Code as an enforceable  
35 restriction, easement, covenant, or servitude subject to Section 402.1 and shall  
36 appropriately reassess any land, the use of which has been so restricted, at the lien  
37 date following the adoption or imposition of the covenant, easement, servitude, or  
38 restriction.

39 **Comment.** Section 402.3 is amended to update cross-references in accordance with the  
40 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
41 the Health and Safety Code.

**Note.** Section 402.3 cross-refers to Section 25355.5 of the Health and Safety Code as a section authorizing adoption of a land use restriction. Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Of the proposed sections recodifying Section 25355.5, only proposed Section 69055 addresses land use restrictions. For this reason, the cross-reference has been updated to refer to Section 69055.

**Absent comment, this proposed cross-reference update will be presumed correct.**

**§ 43002 (amended). Governing definitions for fees and taxes imposed by Health and Safety Code provisions**

SEC. \_\_. Section 43002 of the Revenue and Taxation Code is amended to read:  
43002. The collection and administration of the fees and taxes imposed by Chapter 6.5 (commencing with Section 25100) ~~and Chapter 6.8 (commencing with Section 25300), respectively,~~ of Division 20 of . and Part 2 (commencing with Section 68000) of Division 45 of, the Health and Safety Code, respectively, shall be governed by the definitions in those provisions, unless expressly superseded by the definitions contained in this part.

**Comment.** Section 43002 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

WATER CODE

**§ 13263.2 (amended). Exemption from hazardous waste facility permit for groundwater treatment**

SEC. \_\_. Section 13263.2 of the Water Code is amended to read:  
13263.2. The owner or operator of a facility that treats groundwater which qualifies as a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code is exempt from the requirement to obtain a hazardous waste facility permit pursuant to Section 25201 of the Health and Safety Code for the treatment of groundwater if all of the following conditions are met:

(a) The facility treats groundwater which is extracted for the purposes of complying with one or more of the following:

- (1) Waste discharge requirements prescribed pursuant to Section 13263.
- (2) A cleanup or abatement order issued pursuant to Section 13304.
- (3) A written authorization issued by a regional board or local agency designated pursuant to Section 25283 of the Health and Safety Code.
- (4) An order or approved remedial action plan issued pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 68000) of Division 45 of the Health and Safety Code.

(b) The facility meets, at a minimum, all of the following operating standards:  
(1) The treatment does not require a hazardous waste facilities permit pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901 et seq.).

1 (2) The facility operator prepares and maintains written operating instructions and  
2 a record of the dates, amounts, and types of waste treated.

3 (3) The facility operator prepares and maintains a written inspection schedule and  
4 log of inspections conducted.

5 (4) The records specified in paragraphs (2) and (3) are maintained by the owner  
6 or operator of the facility for a period of three years.

7 (5) The owner or operator maintains adequate records to demonstrate that it is in  
8 compliance with all of the pretreatment standards and with all of the applicable  
9 industrial waste discharge requirements issued by the agency operating the publicly  
10 owned treatment works into which the wastes are discharged.

11 (6)(A) Upon terminating the operation of any treatment process or unit exempted  
12 pursuant to this section, the owner or operator that conducted the treatment removes  
13 or decontaminates all waste residues, containment system components, soils, and  
14 other structures or equipment contaminated with hazardous waste from the unit. The  
15 removal of the unit from service shall be conducted in a manner that does both of  
16 the following:

17 (i) Minimizes the need for further maintenance.

18 (ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate,  
19 contaminated runoff, or waste decomposition products to the environment after the  
20 treatment process ceases operation.

21 (B) Any owner or operator who permanently ceases operation of a treatment  
22 process or unit that is exempted pursuant to this section shall provide written  
23 notification to the regional board or local agency upon completion of all activities  
24 required by this subdivision.

25 (7) The waste is managed in accordance with all applicable requirements for  
26 generators of hazardous waste under Chapter 6.5 (commencing with Section 25100)  
27 of Division 20 of the Health and Safety Code and the regulations adopted by the  
28 Department of Toxic Substances Control pursuant to that chapter.

29 (c) The groundwater is treated at the site where it is extracted in compliance with  
30 one or more of paragraphs (1), (2), (3), and (4) of subdivision (a).

31 (d) All other regulatory requirements applicable to the facility pursuant to Chapter  
32 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code  
33 are met by the owner or operator.

34 (e) The treatment of the contaminated groundwater is not performed under  
35 corrective action required by Section 25200.10 of the Health and Safety Code.

36 **Comment.** Section 13263.2(a)(4) is amended to update cross-references in accordance with the  
37 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
38 the Health and Safety Code.

39 **§ 13275 (amended). Rights and remedies against responsible party**

40 SEC. \_\_. Section 13275 of the Water Code is amended to read:

41 13275. (a) Notwithstanding any other law, a public water system regulated by the  
42 state board pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of

1 Division 104 of the Health and Safety Code shall have the same legal rights and  
2 remedies against a responsible party, when the water supply used by that public  
3 water system is contaminated, as those of a private land owner whose groundwater  
4 has been contaminated.

5 (b) For purposes of this section, “responsible party” has the same meaning as  
6 defined in Section ~~25323.5~~ 68140 of the Health and Safety Code.

7 **Comment.** Section 13275 is amended to update cross-references in accordance with the  
8 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
9 the Health and Safety Code.

10 **§ 13307 (amended). Policies and procedures for hazardous substance discharge**  
11 **investigation and cleanup or abatement**

12 SEC. \_\_. Section 13307 of the Water Code is amended to read:

13 13307. (a) The state board and the Department of Toxic Substances Control shall  
14 concurrently establish policies and procedures consistent with this division that the  
15 state board’s representatives and the representatives of regional boards shall follow  
16 in overseeing and supervising the activities of persons who are carrying out the  
17 investigation of, and cleaning up or abating the effects of, a discharge of a hazardous  
18 substance which creates, or threatens to create, a condition of contamination,  
19 pollution, or nuisance. The policies and procedures shall be consistent with the  
20 policies and procedures established pursuant to Section ~~25355.7~~ 69000 of the Health  
21 and Safety Code and shall include, but are not limited to, all of the following:

22 (1) The procedures the state board and the regional boards will follow in making  
23 decisions as to when a person may be required to undertake an investigation to  
24 determine if an unauthorized hazardous substance discharge has occurred.

25 (2) Policies for carrying out a phased, step-by-step investigation to determine the  
26 nature and extent of possible soil and groundwater contamination or pollution at a  
27 site.

28 (3) Procedures for identifying and utilizing the most cost-effective methods for  
29 detecting contamination or pollution and cleaning up or abating the effects of  
30 contamination or pollution.

31 (4) Policies for determining reasonable schedules for investigation and cleanup,  
32 abatement, or other remedial action at a site. The policies shall recognize the dangers  
33 to public health and the waters of the state posed by an unauthorized discharge and  
34 the need to mitigate those dangers while at the same time taking into account, to the  
35 extent possible, the resources, both financial and technical, available to the person  
36 responsible for the discharge.

37 (b) The state board and the Department of Toxic Substances Control shall jointly  
38 review the policies and procedures that were established pursuant to this section and  
39 Section ~~25355.7~~ 69000 of the Health and Safety Code prior to the enactment of this  
40 subdivision and shall concurrently revise those policies and procedures as necessary  
41 to make them as consistent as possible. Where they cannot be made consistent  
42 because of the differing requirements of this chapter and ~~Chapter 6.8 (commencing~~

1 ~~with Section 25300) of Division 20 Part 2 (commencing with Section 68000) of~~  
2 Division 45 of the Health and Safety Code, the state board and the Department of  
3 Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the  
4 Legislature, recommendations for revising this chapter and ~~Chapter 6.8~~  
5 ~~(commencing with Section 25300) of Division 20 Part 2 (commencing with Section~~  
6 68000) of Division 45 of the Health and Safety Code in order to make consistent the  
7 hazardous substance release cleanup policies and procedures followed by the state  
8 board, the Department of Toxic Substances Control, and the regional boards.

9 **Comment.** Section 13307 is amended to update cross-references in accordance with the  
10 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
11 the Health and Safety Code.

12 **§ 13365 (amended). Billing system and charges for cost recovery**

13 SEC. \_\_. Section 13365 of the Water Code is amended to read:

14 13365. (a)(1) For purposes of this article, unless the context otherwise requires,  
15 “agency” means the state board or a regional board.

16 (2) The terms used in this article shall have the same meaning as the definitions  
17 specified in the statutory authority under which the agency takes any action subject  
18 to this article, except that, notwithstanding ~~Section 25317~~ subdivision (b) of Section  
19 68075 of the Health and Safety Code, for purposes of this article, “hazardous  
20 substance” includes a hazardous substance specified in subdivision (h) of Section  
21 25281 of the Health and Safety Code.

22 (b) On or before July 1, 1997, the agency shall adopt a billing system for the  
23 agency’s cost recovery of investigation, analysis, planning, implementation,  
24 oversight, or other activity related to the removal or remedial or corrective action of  
25 a release of a hazardous substance that includes both of the following:

26 (1) Billing rates and overhead rates by employee job classification.

27 (2) Standardized description of work tasks.

28 (c) Notwithstanding any other provision of law, after July 1, 1997, any charge  
29 imposed upon a responsible party by the agency, to compensate the agency for  
30 some, or all, of its costs incurred in connection with the agency’s investigation,  
31 analysis, planning, implementation, oversight, or other activity related to a removal  
32 or remedial action or a corrective action to a release of a hazardous substance, shall  
33 not be assessed or collected unless all of the following requirements are met:

34 (1) Except as provided in subdivision (f), prior to commencing the work or service  
35 for which the charge is assessed, and at least annually thereafter if the work or  
36 service is continuing, the agency shall provide all of the following information to  
37 the responsible party:

38 (A) A detailed estimate of the work to be performed or services to be provided,  
39 including a statement of the expected outcome of that work, based upon data  
40 available to the agency at the time.

41 (B) The billing rates for all individuals and classes of employees expected to  
42 engage in the work or service.

1 (C) An estimate of all expected charges to be billed to the responsible party by the  
2 agency, including, but not limited to, any overhead assessments that the agency may  
3 be authorized to levy.

4 (2)(A) Invoices shall be issued not less than semiannually with appropriate  
5 incentives for prompt payment.

6 (B) Invoices shall be mailed to the correct person or persons for the responsible  
7 party or parties.

8 (C) Invoices shall provide a daily detail of work performed and time spent by each  
9 employee and contractor employee using the billing and overhead rates and the  
10 standardized description of work tasks adopted pursuant to subdivision (b).

11 (D) Invoices shall include the source and amount of all other charges.

12 (E) Invoices shall be supplemented with statements of any changes in rates and a  
13 justification for any changes.

14 (F) Invoices shall be reviewed for accuracy and appropriateness.

15 (3) Upon request and within a reasonable time, not to exceed 30 working days  
16 from the date of receipt of a request, the agency shall provide the responsible party  
17 with copies of time records and other materials supporting the invoice described in  
18 paragraph (2). No fees or charges may be assessed for the preparation and delivery  
19 of those copies pursuant to this section.

20 (4) The agency shall identify a party who is responsible for resolving disputes  
21 regarding the charges subject to this section and who is not responsible for, or  
22 performing, the work or service for which the charges are assessed.

23 (d) The agency may adjust the scope of the work or service, type of studies, or  
24 other tasks to be performed, based upon analyses necessary to accommodate new  
25 information regarding the extent of contamination of the site, and only after  
26 providing written notice of the change to the responsible party containing the  
27 information specified in paragraph (1) of subdivision (c).

28 (e) The agency may increase billing rates not more than once each calendar year,  
29 to the extent authorized by law. Any increase in billing rates or other charges,  
30 including, but not limited to, overhead charges, shall operate prospectively only,  
31 and shall take effect not sooner than 10 days from the date that written notice has  
32 been provided to the responsible party.

33 (f)(1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that  
34 requires prompt action to protect human health or safety or the environment.

35 (2) Paragraph (1) of subdivision (c) does not apply with respect to those  
36 responsible parties who are not identified until after the beginning of a removal or  
37 remedial action or corrective action to a release of a hazardous substance.

38 **Comment.** Section 13365(a)(2) is amended to update cross-references in accordance with the  
39 nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of  
40 the Health and Safety Code.

41 **§ 13611.5 (amended). Information required from facilities that store perchlorate**

42 SEC. \_\_. Section 13611.5 of the Water Code is amended to read:

1 13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the  
2 owner or operator has met the alternative compliance requirements of subdivision  
3 (b), an owner or operator of a storage facility that has stored in any calendar year  
4 since January 1, 1950, over 500 pounds of perchlorate shall submit to the state  
5 board, to the extent feasible, all of the following information:

6 (1) The volume of perchlorate stored each year.

7 (2) The method of storage.

8 (3) The location of storage. To the extent authorized by federal law, in the case of  
9 a perchlorate storage facility under the control of the Armed Forces of the United  
10 States, “location” means the name and address of the property within which the  
11 perchlorate storage facility is located.

12 (4) Copies of documents relating to any monitoring undertaken for potential leaks  
13 into the water bodies of the state.

14 (b) The owner or operator of a storage facility that has stored in any calendar year  
15 since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this  
16 section if both of the following conditions are met:

17 (1) The owner or operator has provided substantially similar information as  
18 required pursuant to subdivision (a) to a state, local, or federal agency pursuant to  
19 any of the following:

20 (A) An order issued by a regional board pursuant to Chapter 5 (commencing with  
21 Section 13300) of Division 7.

22 (B) An order, consent order, or consent decree issued or entered into by the  
23 Department of Toxic Substances Control pursuant to ~~Chapter 6.8 (commencing with~~  
24 ~~Section 25300) of Division 20 Part 2 (commencing with Section 68000) of Division~~  
25 45 of the Health and Safety Code.

26 (C) An order, consent order, or consent decree issued or entered into by the United  
27 States Environmental Protection Agency pursuant to the Comprehensive  
28 Environmental Response, Compensation, and Liability Act of 1980, as amended (42  
29 U.S.C. Sec. 9601 et seq.).

30 (D) The requirement under Section 25504.1 of the Health and Safety Code, as  
31 added by Assembly Bill 826 of the 2003–04 Regular Session.

32 (2) The owner or operator, on or before January 1, 2005, and annually thereafter,  
33 notifies the state board of the governmental entity to which the information is  
34 provided and the state board determines the information supplied is substantially  
35 similar as the information required to be reported pursuant to subdivision (a). In the  
36 case of any information submitted to a federal or local agency, the state board may  
37 require the owner or operator, in addition, to submit that information to the state  
38 board if the state board determines that the information is not otherwise reasonably  
39 available to the state board.

40 (c) This section shall not be administered or implemented if the state board  
41 receives notification from the Secretary for Environmental Protection pursuant to  
42 Section 13613 that the Secretary for Environmental Protection has established a  
43 database that is able to receive perchlorate inventory information.

1 (d) Information on perchlorate storage need only be submitted pursuant to this  
2 section one time, unless information originally submitted pursuant to this section  
3 has changed.

4 **Comment.** Section 13611.5(b)(1)(B) is amended to update cross-references in accordance with  
5 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
6 of the Health and Safety Code.

7 **§ 83002 (amended). Schedule of appropriation**

8 SEC. \_\_. Section 83002 of the Water Code is amended to read:

9 83002. The sum of eight hundred twenty million nine hundred seventy-three  
10 thousand dollars (\$820,973,000) is hereby appropriated in accordance with the  
11 following schedule:

12 (a) Of the funds made available pursuant to Chapter 1.699 (commencing with  
13 Section 5096.800) of Division 5 of the Public Resources Code, the sum of two  
14 hundred eighty-five million dollars (\$285,000,000) is hereby appropriated as  
15 follows:

16 (1) Pursuant to subdivision (c) of Section 5096.821 of the Public Resources Code,  
17 the sum of one hundred thirty-five million dollars (\$135,000,000) to the department  
18 for the acquisition, design, and construction of essential emergency preparedness  
19 supplies and projects. Prior to the design or construction of any project funded  
20 pursuant to this paragraph, the California Bay-Delta Authority, or its successor,  
21 shall approve the specific project or program. Preference shall be given to projects  
22 that protect and improve Delta water quality and drinking water supplies. Of the  
23 amount made available pursuant to this paragraph, not less than thirty-five million  
24 dollars (\$35,000,000) shall be expended by the department for projects to reinforce  
25 those sections of the levees that have the highest potential to suffer breaches or  
26 failure and cause harm to municipal and industrial water supply aqueducts that cross  
27 the Delta and which are vulnerable to flood damage, including the installation of  
28 scour protection on the supports of the aqueducts in those areas located adjacent to  
29 the sections of the levees that have been identified as having the highest risk for  
30 breaches or failure.

31 (2) Pursuant to Section 5096.827 of the Public Resources Code, the sum of one  
32 hundred fifty million dollars (\$150,000,000) to the department for grants for  
33 stormwater flood management projects that reduce flood damage and provide other  
34 benefits, including groundwater recharge, water quality improvement, and  
35 ecosystem restoration. Not less than one hundred million dollars (\$100,000,000) of  
36 this amount shall be available for projects that address immediate public health and  
37 safety needs or strengthen existing flood control facilities to address seismic safety  
38 issues. Twenty million dollars (\$20,000,000) shall be available for local agencies to  
39 meet immediate water quality needs related to combined municipal sewer and  
40 stormwater systems to prevent sewage discharges into state waters. Twenty million  
41 dollars (\$20,000,000) shall be available for urban stream stormwater flood

1 management projects to reduce the frequency and impacts of flooding in watersheds  
2 that drain to the San Francisco Bay.

3 (b) Of the funds made available pursuant to Division 43 (commencing with  
4 Section 75001) of the Public Resources Code, the sum of five hundred twenty-six  
5 million four hundred ninety-one thousand dollars (\$526,491,000) is hereby  
6 appropriated as follows:

7 (1) Pursuant to Section 75022 of the Public Resources Code, the sum of fifty  
8 million dollars (\$50,000,000) to the State Department of Public Health for grants  
9 for small community drinking water system infrastructure improvements and  
10 related action to meet safe drinking water standards. First priority for these funds  
11 shall be given to disadvantaged or severely disadvantaged communities lacking  
12 resources to provide safe drinking water to residents. Small community drinking  
13 water systems that are dependent on surface water and are under orders from the  
14 State Department of Public Health to boil water from existing treatment systems for  
15 parasites, viruses, or giardia shall be eligible for grants for drinking water system  
16 infrastructure improvements.

17 (2) Pursuant to Section 75025 of the Public Resources Code, the sum of fifty  
18 million four hundred thousand dollars (\$50,400,000) to the State Department of  
19 Public Health for grants for projects to prevent or reduce the contamination of  
20 groundwater that serves as a source of drinking water. Funds appropriated by this  
21 paragraph shall be available for immediate projects needed to protect public health  
22 by preventing or reducing the contamination of groundwater that serves as a major  
23 source of drinking water for a community.

24 (A) The State Department of Public Health shall prioritize project funding based  
25 on the following criteria:

26 (i) The threat posed by groundwater contamination to the affected community's  
27 overall drinking water supplies, including the need for the treatment or construction  
28 of alternative supplies if groundwater is not available due to contamination.

29 (ii) The potential for groundwater contamination to spread and reduce drinking  
30 water supply and water storage capacity for major population areas.

31 (iii) The potential of the project, if fully implemented, to enhance local water  
32 supply reliability.

33 (iv) The potential of the project to increase opportunities for groundwater recharge  
34 and optimization of groundwater supplies.

35 (B) The State Department of Public Health shall give additional consideration to  
36 projects that meet any of the following criteria:

37 (i) The project is implemented pursuant to a comprehensive basinwide  
38 groundwater quality management and remediation plan or is necessary to develop a  
39 comprehensive groundwater plan.

40 (ii) Affected groundwater provides a local supply that, if contaminated, will  
41 require the importation of additional water from the Sacramento-San Joaquin Delta  
42 or the Colorado River.

43 (iii) The project will serve an economically disadvantaged community.

1 (iv) Multiple contaminants affect more than one-third of the well capacity of a  
2 local water system.

3 (C) Of the amount made available by this paragraph, up to ten million dollars  
4 (\$10,000,000) shall be allocated for projects that meet the criteria of this paragraph  
5 and both of the following criteria:

6 (i) The project has the potential to leverage funds.

7 (ii) The project addresses contamination at a site on the list maintained by the  
8 Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5  
9 (commencing with Section 68760) of Chapter 4 of Part 2 of Division 45 of the  
10 Health and Safety Code or a site listed on the National Priorities List pursuant to the  
11 federal Comprehensive Environmental Response, Compensation, and Liability Act  
12 of 1980 (42 U.S.C. Sec. 9601 et seq.).

13 (D) Of the funds made available by this paragraph, two million dollars  
14 (\$2,000,000) shall be allocated to the State Department of Public Health to contract  
15 with the State Water Resources Control Board for the purposes of Section 83002.5.

16 (3)(A) Pursuant to Section 75026 of the Public Resources Code, the sum of one  
17 hundred eighty-one million seven hundred ninety-one thousand dollars  
18 (\$181,791,000) to the department for integrated regional water management  
19 activities as follows:

20 (i) One hundred million dollars (\$100,000,000) for implementation grants.

21 (ii) Thirty-nine million dollars (\$39,000,000) for planning grants, local  
22 groundwater assistance grants, and CALFED scientific research grants.

23 (iii)(I) Twenty-two million ninety-one thousand dollars (\$22,091,000) for projects  
24 with interregional or statewide benefits.

25 (II) Of the amount made available pursuant to this paragraph, not less than ten  
26 million dollars (\$10,000,000) shall be made available for expenditure to  
27 interconnect municipal and industrial water supply aqueducts that cross the Delta  
28 and that are vulnerable to flood damage, including the design and construction of  
29 interties among aqueducts that provide at least 90 percent of a regional water supply  
30 that would be threatened in the event of levee failure or other disaster, and that  
31 support an integrated regional emergency water supply system.

32 (iv) Twenty million seven hundred thousand dollars (\$20,700,000) for program  
33 delivery costs.

34 (B) An implementation grant pursuant to clause (i) of subparagraph (A) shall be  
35 available only for projects included in an integrated regional water management  
36 plan that meets one of the following conditions:

37 (i) The plan complies with Part 2.2 (commencing with Section 10530) of Division  
38 6.

39 (ii) For a plan adopted before the date on which this section is enacted, both of the  
40 following apply:

41 (I) The regional water management group that prepared the plan enters into a  
42 binding agreement with the department to update the plan to comply with Part 2.2

1 (commencing with Section 10530) of Division 6 within two years of the date on  
2 which the agreement was entered into.

3 (II) The regional water management group undertakes all reasonable and feasible  
4 efforts to take into account water-related needs of disadvantaged communities in the  
5 area within the boundaries of the plan.

6 (C)(i) Of the funds described in clauses (i) and (ii) of subparagraph (A), the  
7 department shall allocate not less than 10 percent to facilitate and support the  
8 participation of disadvantaged communities in integrated regional water  
9 management planning and for projects that address critical water supply or water  
10 quality needs for disadvantaged communities.

11 (ii) Except as otherwise specified in clause (iii), the department shall achieve the  
12 allocation described in clause (i) by awarding grants for those purposes to  
13 disadvantaged communities within a hydrologic region in a total dollar amount that  
14 is not less than 10 percent of the total dollar amount of grants awarded within the  
15 region.

16 (iii) The department shall implement this subparagraph with due diligence, but  
17 shall implement clause (ii) only to the extent that the implementation does not affect  
18 the expeditious allocation of funds for integrated regional water management grants.

19 (iv) The department shall submit a report to the Legislature with regard to the  
20 implementation of this subparagraph on or before July 1, 2010.

21 (D) Of the funds described in clause (iii) of subparagraph (A), the department  
22 shall allocate two million dollars (\$2,000,000) to Tulare County for development of  
23 an integrated water quality and wastewater treatment program plan to address the  
24 drinking water and wastewater needs of disadvantaged communities in the Tulare  
25 Lake Basin. Funds allocated pursuant to this paragraph shall be available for  
26 assessment and feasibility studies necessary to develop the plan, and the plan shall  
27 include recommendations for planning, infrastructure, and other water management  
28 actions, and shall include specific recommendations for regional drinking water  
29 treatment facilities, regional wastewater treatment facilities, conjunctive use sites  
30 and groundwater recharge, groundwater for surface water exchanges, related  
31 infrastructure, and cost-sharing mechanisms. Tulare County shall consult with  
32 appropriate stakeholders, including representatives of disadvantaged communities,  
33 when preparing the plan. The department, in consultation with the State Department  
34 of Public Health, shall submit the plan to the Legislature by January 1, 2011.

35 (E) Of the funds described in clause (i) of subparagraph (A), the department shall  
36 allocate not less than twenty million dollars (\$20,000,000) to support urban and  
37 agricultural water conservation projects necessary to meet a 20-percent reduction in  
38 per capita water use by the year 2020.

39 (4) Pursuant to Section 75029 of the Public Resources Code, the sum of ninety  
40 million dollars (90,000,000) to the department for the implementation of Delta water  
41 quality improvement projects that protect drinking water supplies as follows:

42 (A) Pursuant to subdivision (d) of Section 75029 of the Public Resources Code,  
43 the sum of fifty million dollars (\$50,000,000) for drinking water intake facility

1 projects to improve the quality of drinking water supply from the Sacramento-San  
2 Joaquin Delta that are identified in the June 2005 Delta Region Drinking Water  
3 Quality Management Plan. Funding shall be made available for environmental  
4 review, design, and construction. Project proponents seeking funding for  
5 construction shall meet all of the following criteria:

6 (i) Have completed documentation required under the California Environmental  
7 Quality Act (Division 13 (commencing with Section 21000) of the Public Resources  
8 Code) and a notice of determination has been filed prior to June 30, 2008.

9 (ii) Have demonstrated multiple benefits in conveyance and Delta operation to  
10 achieve protection or improvement to Delta pelagic fisheries, as well as drinking  
11 water quality improvement and public health protection.

12 (iii) Are able to complete design and commence construction before June 30,  
13 2009.

14 (iv) Have local or federal cost-sharing funds immediately available.

15 (B) The sum of forty million dollars (\$40,000,000) for projects consistent with  
16 subdivision (c) of Section 75029 of the Public Resources Code.

17 (5) Pursuant to Section 75033 of the Public Resources Code, the sum of one  
18 hundred million dollars (\$100,000,000) to the department for the acquisition,  
19 preservation, protection, and restoration of Sacramento-San Joaquin Delta resources  
20 in accordance with Section 75033 of the Public Resources Code. The department  
21 shall expend these funds pursuant to priorities that reflect the value of the resources  
22 and land uses protected by the levees to the state as a whole, consistent with the  
23 Delta Vision Strategic Plan. Projects shall be selected to improve the stability of the  
24 Delta levee system, reduce subsidence, and assist in restoring the ecosystem of the  
25 Delta. Priority shall be given to projects that improve conditions for Delta smelt and  
26 other native fish. Up to five million dollars (\$5,000,000) made available pursuant to  
27 this paragraph shall be available as grants and direct expenditures for emergency  
28 communications equipment to improve emergency response preparedness.

29 (6) Pursuant to Chapter 4 (commencing with Section 75041) of Division 43 of the  
30 Public Resources Code, the sum of thirty-seven million dollars (\$37,000,000) to the  
31 department as follows:

32 (A)(i) Twelve million dollars (\$12,000,000) to complete the planning and  
33 feasibility studies associated with new surface storage under the California Bay-  
34 Delta Program.

35 (ii) The planning and feasibility studies shall include the following information:

36 (I) The identification of specific construction and operation conditions proposed  
37 for each surface storage facility, including consideration of climate change, an  
38 estimated schedule for the construction and completion of each project funded under  
39 Section 75041, and the total costs of constructing each project.

40 (II) A description of the estimated total costs to construct each project and an  
41 allocation of the costs to public and private beneficiaries.

42 (iii) Any feasibility study conducted by or funded by the state for new surface  
43 storage under the California Bay-Delta Program shall evaluate funded projects

1 consistent with all statutory and other legally established requirements for  
2 protection of environmental and natural resources, including protections for the  
3 McCloud River pursuant to Section 5093.542 of the Public Resources Code.

4 (iv) The feasibility studies shall be prepared and submitted to the Governor and  
5 the Legislature no later than December 31, 2009.

6 (B)(i) Fifteen million dollars (\$15,000,000) for planning and feasibility studies to  
7 identify potential options for the reoperation of the state's flood protection and water  
8 supply systems that will optimize the use of existing facilities and groundwater  
9 storage capacity.

10 (ii) The studies shall incorporate appropriate climate change scenarios and be  
11 designed to determine the potential to achieve the following objectives:

12 (I) Integration of flood protection and water supply systems to increase water  
13 supply reliability and flood protection, improve water quality, and provide for  
14 ecosystem protection and restoration.

15 (II) Reoperation of existing reservoirs, flood facilities, and other water facilities  
16 in conjunction with groundwater storage to improve water supply reliability, flood  
17 control, and ecosystem protection and to reduce groundwater overdraft.

18 (III) Promotion of more effective groundwater management and protection and  
19 greater integration of groundwater and surface water resource uses.

20 (IV) Improvement of existing water conveyance systems to increase water supply  
21 reliability, improve water quality, expand flood protection, and protect and restore  
22 ecosystems.

23 (C) Ten million dollars (\$10,000,000) to update the California Water Plan,  
24 including evaluation of climate change impacts, the development of strategies to  
25 adapt to climate change impacts, technical assistance to local agencies that  
26 incorporate climate change into their studies, reports, and plans, and the  
27 identification of strategies to reduce greenhouse gas emissions related to the storage,  
28 conveyance, and distribution of water.

29 (D) Of the money made available pursuant to subparagraphs (A), (B), and (C), up  
30 to two million dollars (\$2,000,000) may be expended for planning and feasibility  
31 studies necessary to implement the Delta Vision Strategic Plan, developed pursuant  
32 to Executive Order No. S-17-06, dated September 28, 2006, establishing the Delta  
33 Vision process.

34 (7) Pursuant to Section 75050 of the Public Resources Code, the sum of seventeen  
35 million three hundred thousand dollars (\$17,300,000) for the protection and  
36 restoration of rivers and streams as follows:

37 (A) Ten million dollars (\$10,000,000) to the State Coastal Conservancy for the  
38 purposes of subdivision (i) of Section 75050 of the Public Resources Code.

39 (B) Seven million three hundred thousand dollars (\$7,300,000) to the department  
40 for the purposes of subdivision (e) of Section 75050 of the Public Resources Code.

41 (c) Of the funds made available pursuant to subdivision (a) of Section 79550, the  
42 sum of three million seven hundred sixty thousand dollars (\$3,760,000) is hereby

1 appropriated to the department for planning and feasibility studies associated with  
2 surface storage under the California Bay-Delta Program.

3 (d)(1) Of the funds available pursuant to Section 79101, the sum of two million  
4 two hundred seventy-two thousand dollars (\$2,272,000) is appropriated to the  
5 department for the Sacramento River Hamilton City Area Flood Damage Reduction  
6 Project.

7 (2) Of the funds available pursuant to subdivision (c) of Section 79196.5, the sum  
8 of three million four hundred fifty thousand dollars (\$3,450,000) is appropriated to  
9 the department for the Franks Tract Pilot Project under the CALFED Drinking  
10 Water Quality Program.

11 **Comment.** Section 83002(b)(2)(C)(ii) is amended to update cross-references in accordance with  
12 the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20  
13 of the Health and Safety Code.

14 This section was also amended to insert subclause labels.

15 UNCODIFIED

16 **Contingent and deferred operation**

17 SEC. \_\_\_\_\_. This act shall only become operative if [**the Hazardous Substance**  
18 **Account recodification bill**] is enacted and becomes operative on January 1, 2023,  
19 and that bill would reorganize and make other nonsubstantive changes to the  
20 Carpenter-Presley-Tanner Hazardous Substance Account Act, in which case this act  
21 shall also become operative on January 1, 2023.

22 **Subordination clause**

23 SEC. \_\_\_\_\_. Any section of any act enacted by the Legislature during the 2021  
24 calendar year, other than a section of the annual maintenance of the codes bill or  
25 another bill with a subordination clause, that takes effect on or before January 1,  
26 2023, and that amends, amends and renumbers, amends and repeals, adds, repeals  
27 and adds, or repeals a section that is amended, amended and renumbered, amended  
28 and repealed, added, repealed and added, or repealed by this act, shall prevail over  
29 this act, whether that act is chaptered before or after this act.

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